

APPROPRIATIONS

CHAPTER 1

HOUSE BILL NO. 1001

(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; and to amend and reenact sections 54-07-04 and 54-08-03 of the North Dakota Century Code, relating to the salaries of the governor and lieutenant 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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the office of the governor for the purpose of defraying the expenses of the governor, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$2,127,065
Operating expenses	214,370
Equipment	4,200
Contingency	10,000
Roughrider awards	<u>10,800</u>
Total general fund appropriation	\$2,366,435

SECTION 2. APPROPRIATION - AUTHORIZATION - GOVERNOR'S OFFICE. The governor's office may receive and expend any federal or private funds which are hereby appropriated which become available during the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 3. AMENDMENT. Section 54-07-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-07-04. Salary of governor. The annual salary of the governor is ~~seventy-six~~ eighty-five thousand ~~eight~~ five hundred ~~seventy-nine~~ six dollars through June 30, ~~2000~~ 2002, ~~seventy-eight~~ and eighty-seven thousand ~~four~~ two hundred ~~seventeen~~ sixteen dollars through ~~December 31, 2000~~, and ~~eighty-three~~ thirty-three thousand ~~thirteen~~ dollars thereafter.

SECTION 4. AMENDMENT. Section 54-08-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-08-03. Salary of lieutenant governor. The annual salary of the lieutenant governor is ~~sixty-three~~ sixty-six thousand ~~one~~ three hundred ~~eighty-three~~ eighty dollars through June 30, ~~2000~~ 2002, and ~~sixty-four~~ sixty-seven thousand ~~four~~ seven hundred ~~forty-seven~~ eight dollars thereafter.

Approved April 26, 2001

Filed April 26, 2001

CHAPTER 2

HOUSE BILL NO. 1002

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

SECRETARY OF STATE

AN ACT to provide an appropriation for defraying the expenses of the secretary of state and public printing; and to amend and reenact subsection 2 of section 54-05.1-03 and section 54-09-05 of the North Dakota Century Code, relating to legislative lobbying expenditure reports and the salary of the secretary of state.

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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, 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, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

SECRETARY OF STATE

Salaries and wages	\$2,115,131
Operating expenses	2,063,790
Equipment	84,000
Petition review	12,000
Total all funds	<u>\$4,274,921</u>
Less estimated income	370,000
Total general fund appropriation	<u>\$3,904,921</u>

Subdivision 2.

SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	<u>\$508,000</u>
Total general fund appropriation	<u>\$508,000</u>
Grand total general fund appropriation H. B. 1002	\$4,412,921
Grand total special funds appropriation H. B. 1002	\$370,000
Grand total all funds appropriation H. B. 1002	<u>\$4,782,921</u>

SECTION 2. AMENDMENT. Subsection 2 of section 54-05.1-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Each person ~~so~~ registering to act as a lobbyist shall file, on or before August first following the expiration of the registration period, ~~file~~ with the secretary of state a detailed report. The report must include a statement as to each expenditure, if any, of ~~twenty-five~~ fifty dollars or more expended on any single occasion during the legislative session or the interim, as the case may be, on any individual in carrying out the lobbyist's work or include a statement that no reportable expenditures were made during the reporting period. A state official or agency may not require reporting of lobbyist expenditures other than is required

under this subsection. The secretary of state shall provide a prescribed form for reporting pursuant to this chapter. The secretary of state shall charge and collect fees for late filing of the detailed expenditure report as follows:

- a. Within sixty days after the date provided in this subsection for filing the detailed expenditure report, twenty-five dollars;
- b. Thereafter, fifty dollars; and
- c. If any currently registered lobbyist fails to file a detailed expenditure report and pay any late fee by October first, the lobbyist's registration is automatically revoked. The lobbyist's registration may be reinstated if the lobbyist thereafter files the detailed expenditure report and pays any outstanding late fee.

SECTION 3. AMENDMENT. Section 54-09-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-09-05. Salary of secretary of state. The annual salary of the secretary of state is ~~fifty-eight~~ sixty-four thousand ~~two~~ seven hundred ~~sixty-two~~ forty-two dollars through ~~June 30, 2000~~ December 31, 2001, ~~fifty-nine~~ sixty-six thousand ~~four~~ six hundred ~~twenty-eight~~ eighty-four dollars through ~~December 31, 2000~~ June 30, 2002, and ~~sixty-one~~ sixty-eight thousand ~~one~~ hundred ~~forty-two~~ eighteen dollars thereafter.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 3

HOUSE BILL NO. 1003

(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 require the state fire marshal to inspect buildings as requested by a political subdivision; to provide for a legislative council study; to provide statements of legislative intent; to amend and reenact section 53-06.1-12, subsections 1 and 3 of section 53-06.2-02, subsection 3 of section 53-06.2-11, sections 54-12-11 and 54-12-18 of the North Dakota Century Code, relating to gaming and excise tax collections, racing commission supervision and compensation, racing commission expenses, the salary of the attorney general, and the attorney general refund fund; to provide for retroactive application; 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, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$14,970,368
Operating expenses	6,002,469
Equipment	414,876
Grants	5,734,398
Litigation fees	50,000
Racing commission	300,000
National criminal history improvement project	2,358,720
Arrest and return of fugitives	10,000
Gaming commission	5,109
Law enforcement programs	631,056
High-intensity drug trafficking area	<u>1,931,648</u>
Total all funds	\$32,408,644
Less estimated income	<u>17,604,259</u>
Total general fund appropriation	\$14,804,385

SECTION 2. FIRE AND TORNADO FUND. The estimated income line item in section 1 of this Act includes the sum of \$385,143, or so much of the sum as may be necessary from the state fire and tornado fund, for the purpose of defraying the expenses related to the state fire marshal program.

SECTION 3. LEGISLATIVE INTENT - STATE FIRE MARSHAL PROGRAM. It is the intent of the legislative assembly that the attorney general charge and collect a fee for services provided by the state fire marshal program to entities insured by the fire and tornado fund. For services provided to entities not insured by the fire and tornado fund, the attorney general is to prepare and submit a memorandum billing to the entity receiving the service. For the purpose of this section, a memorandum

billing means a document detailing services and cost of services provided. The memorandum billing does not require a remittance of funds.

SECTION 4. ASSET FORFEITURE FUND. The sum of \$62,504 is available from the asset forfeiture fund to the attorney general as included in estimated income of section 1 of this Act.

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 \$629,000 for local gaming enforcement grants.

SECTION 6. PETROLEUM RELEASE COMPENSATION FUND - FEES. The attorney general shall charge and collect fees for services provided by the state fire marshal program to entities covered by the petroleum release compensation fund under chapter 23-37. Fees under this section may be collected in amounts of up to a total of \$35,000 for the biennium beginning July 1, 1999, and ending June 30, 2001, and of up to a total of \$35,000 for services provided by the state fire marshal program for the biennium beginning July 1, 2001, and ending June 30, 2003. All fees collected under this section must be deposited in the attorney general's operating fund.

SECTION 7. STATE FIRE MARSHAL - BUILDING INSPECTIONS AS REQUESTED BY POLITICAL SUBDIVISIONS - FEES. The state fire marshal shall conduct, upon request of a political subdivision, an inspection of a publicly or privately owned building and shall charge a fee for the cost of providing this service for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 8. ATTORNEY GENERAL REFUND FUND - EXCEPTION - ESTIMATED INCOME. Notwithstanding section 54-12-18, the attorney general may retain \$100,000 in the attorney general refund fund that would otherwise be transferred to the general fund on June 30, 2001. The estimated income line item in section 1 of this Act includes \$100,000 from the attorney general refund fund for the purpose of defraying the expenses of the consumer protection division for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 9. 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, 2001, and ending June 30, 2003.

SECTION 10. LEGISLATIVE INTENT - CLANDESTINE LABORATORY CLEANUP - EMERGENCY COMMISSION REQUEST. It is the intent of the legislative assembly that the attorney general request emergency commission approval for funding from the state contingencies appropriation if additional funding is needed for defraying the cleanup costs of clandestine laboratories and if federal funds are not available for this purpose for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 11. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$197,714, or so much of the sum as may be necessary, to the attorney general for the purpose of providing local gaming enforcement grants, for the period beginning with the effective date of this section, and ending June 30, 2001.

SECTION 12. LEGISLATIVE INTENT - LITIGATION FEES. It is the intent of the legislative assembly that the attorney general submit a request to the emergency commission for an additional appropriation for litigation fees, from the contingency fund, if the \$50,000 appropriated in the litigation fees line item in section 1 of this Act is exhausted.

SECTION 13. COLLECTIONS. Section 1 of this Act includes the appropriation of up to \$18,000 in revenues collected from fees charged for gaming law and administrative rules manuals and recordkeeping booklets published by the attorney general for the period beginning July 1, 2001, and ending June 30, 2003.

SECTION 14. LEGISLATIVE COUNCIL STUDY - RACING COMMISSION. The legislative council shall consider studying, during the 2001-02 interim, the racing commission, including its authority to schedule, promote, support, and regulate live or simulcast racing in North Dakota. If chosen, the study must address the effectiveness of the commission's authority to both promote and regulate racing and whether its authority is appropriate for the commission and its members. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

¹ **SECTION 15. AMENDMENT.** Section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12. Gaming and excise taxes - Deposits and allocations.

1. A gaming tax is imposed on the total adjusted gross proceeds earned by a licensed organization in a quarter and it must be computed and paid to the attorney general on a quarterly basis on the tax return. This tax must be paid from adjusted gross proceeds and is not part of the allowable expenses. The tax rates are:
 - a. On adjusted gross proceeds not exceeding two hundred thousand dollars, a tax of five percent.
 - b. On adjusted gross proceeds exceeding two hundred thousand dollars but not exceeding four hundred thousand dollars, a tax of ten percent.
 - c. On adjusted gross proceeds exceeding four hundred thousand dollars but not exceeding six hundred thousand dollars, a tax of fifteen percent.
 - d. On adjusted gross proceeds exceeding six hundred thousand dollars, a tax of twenty percent.
2. In addition to any other tax provided by law and in place of sales or use taxes, there is imposed an excise tax of four and one-half percent on the gross proceeds from the sale at retail of pull tabs to a final user. This includes pull tabs provided to a player in exchange for redeemed

¹ Section 53-06.1-12 was also amended by section 1 of Senate Bill No. 2234, chapter 464.

winning pull tabs. The tax must be paid to the attorney general when tax returns are filed.

3. ~~The~~ Except as provided in subsection 4, the state treasurer shall deposit gaming and excise taxes, monetary fines, and interest and penalties collected in the general fund in the state treasury.
4. The state treasurer shall deposit three percent of the total taxes 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 16. AMENDMENT. Subsections 1 and 3 of section 53-06.2-02 of the North Dakota Century Code are amended and reenacted as follows:

1. A North Dakota racing commission is established in the office of the attorney general. The commission is subject to the supervision and direction of the attorney general, except with regard to the commission's authority to spend the funds described in subsection 6 of section 53-06.2-11. The attorney general may require payment for any services rendered to the racing commission. Payment for such services must be deposited into the attorney general's operating fund. The commission consists of the chairman and four other members appointed by the governor. Of the members appointed by the governor, one must be appointed from a list of four nominees, one of whom is nominated by the state chapter or affiliate of the American quarter horse racing association, one of whom is nominated by the state chapter or affiliate of the United States trotting association, one of whom is nominated by the state chapter or affiliate of the international Arabian horse association, and one of whom is nominated by the state chapter or affiliate of the North Dakota thoroughbred association. The members serve five-year terms and until a successor is appointed and qualified. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so that one term expires each July first. At the expiration of the five-year term of each incumbent member of the commission, the governor shall appoint a new member to the commission.
3. Commission members are entitled to ~~forty~~ seventy-five dollars per day for compensation, and mileage and expense reimbursement as allowed to other state employees.

SECTION 17. AMENDMENT. Subsection 3 of section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~emergency commission~~ attorney general, receive no more than twenty-five percent of this fund for the purpose of payment of operating expenses of the commission.

SECTION 18. AMENDMENT. Section 54-12-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-12-11. Salary of attorney general. The annual salary of the attorney general is ~~sixty-five~~ seventy-one thousand ~~seven hundred fifty-three~~ seventy-two dollars through ~~June 30, 2000~~ December 31, 2001, ~~sixty-seven~~ seventy-three thousand ~~sixty-eight~~ two hundred four dollars through ~~December 31, 2000~~ June 30, 2002, and ~~sixty-nine~~ seventy-four thousand ~~two~~ six hundred ~~sixty-eight~~ dollars thereafter.

SECTION 19. AMENDMENT. Section 54-12-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-12-18. Special fund established - Continuing appropriation. A special fund is established in the state treasury and designated as the attorney general refund fund. The attorney general shall deposit all moneys recovered by the consumer protection division for refunds to consumers in cases where persons or parties are found to have violated the consumer fraud laws, all costs, expenses, attorney's fees, and civil penalties collected by the division regarding any consumer protection or antitrust matter, all cash deposit bonds paid by applicants for a transient merchant's license who do not provide a surety bond, and all funds and fees collected by the gaming section for licensing tribal gaming and for the investigation of gaming employees, applicants, organizations, manufacturers, distributors, or tribes involved in state or tribal gaming. The moneys in the fund are appropriated, as necessary, for the following purposes:

1. To provide refunds of moneys recovered by the consumer protection and antitrust division on behalf of specifically named consumers;
2. To pay valid claims against cash deposit bonds posted by transient merchant licensees;
3. To refund, upon expiration of the two-year period after the expiration of the transient merchant's license, the balance of any cash deposit bond remaining after the payment of valid claims;
4. To pay costs, expenses, and attorney's fees and salaries incurred in the operation of the consumer protection division; and
5. To pay the actual costs of background investigations, licensing, and enforcement of gaming in the state or pursuant to Indian gaming compacts.

At the end of each ~~fiscal year~~ biennium any moneys in the fund in excess of the amounts required for subsections 1, 2, 3, and 5 must be deposited in the general fund. The attorney general, with the concurrence of the director of the office of management and budget, shall establish the necessary accounting procedures for

use of the attorney general refund fund, particularly with respect to expenditures under subsection 4.

SECTION 20. RETROACTIVE APPLICATION. Section 6 of this Act is effective for services provided by the state fire marshal program beginning July 1, 1999.

SECTION 21. EMERGENCY. Sections 8 and 11 of this Act are declared to be an emergency measure.

Approved April 26, 2001

Filed April 26, 2001

CHAPTER 4

HOUSE BILL NO. 1004

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

STATE AUDITOR

AN ACT to provide an appropriation for defraying the expenses of the state auditor; and to amend and reenact section 54-10-10 of the North Dakota Century Code, relating to the salary of the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state auditor for the purpose of defraying the expenses of the state auditor, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$5,872,615
Operating expenses	760,320
Equipment	<u>78,970</u>
Total all funds	\$6,711,905
Less estimated income	<u>2,145,837</u>
Total general fund appropriation	\$4,566,068

SECTION 2. APPROPRIATION. Section 1 of this Act includes an appropriation of up to \$1,288,567 in funds generated by the state auditor from political subdivision audit service fees for the period beginning July 1, 2001, and ending June 30, 2003. Any amount in excess of \$1,288,567 must be deposited in the state auditor operating account and made available for appropriation after June 30, 2003.

SECTION 3. AMENDMENT. Section 54-10-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-10-10. Salary of state auditor. The annual salary of the state auditor is ~~fifty-eight~~ sixty-four thousand ~~two~~ seven hundred ~~sixty-two~~ forty-two dollars through ~~June 30, 2000~~ December 31, 2001, ~~fifty-nine~~ sixty-six thousand ~~four~~ six hundred ~~twenty-eight~~ eighty-four dollars through ~~December 31, 2000~~ June 30, 2002, and ~~sixty-two~~ sixty-eight thousand ~~eight~~ hundred ~~fifty-five~~ eighteen dollars thereafter.

Approved April 26, 2001
Filed April 26, 2001

CHAPTER 5

HOUSE BILL NO. 1005

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

STATE TREASURER

AN ACT to provide an appropriation for defraying the expenses of the state treasurer; to amend and reenact subsection 1 of the new section to chapter 5-01 of the North Dakota Century Code as created by section 1 of House Bill No. 1404, as approved by the fifty-seventh legislative assembly, and sections 54-11-13 and 54-27-08 of the North Dakota Century Code, relating to issuance of farm winery licenses, the salary of the state treasurer, and the signing of warrants by electronic means; and to provide legislative intent to prohibit payment of national association of state treasurers-related activities.

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 hereby 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, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$585,879
Operating expenses	106,036
Equipment	2,000
In lieu of tax payments	<u>1,932,419</u>
Total general fund appropriation	\$2,626,334

² **SECTION 2. AMENDMENT.** Subsection 1 of the new section to chapter 5-01 of the North Dakota Century Code as created by section 1 of House Bill No. 1404, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

1. The state ~~treasurer~~ tax commissioner may issue a farm winery license to the owner or operator of a farm winery located within this state to produce table or sparkling wines. 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. Licenses may be issued and renewed for an annual fee of fifty dollars, which is in lieu of all other license fees required by this title.

SECTION 3. AMENDMENT. Section 54-11-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

² Section 5-01-17 was created by section 1 of House Bill No. 1404, chapter 87.

54-11-13. Salary of state treasurer. The annual salary of the state treasurer is ~~forty-two thousand two hundred twenty-eight~~ fifty-eight ~~sixty-two thousand two hundred twenty-eight~~ sixty-two thousand ~~two hundred twenty-eight~~ two hundred ~~sixty-two~~ sixty-two ~~seventy-four~~ seventy-four dollars through June 30, ~~2000~~ 2002, ~~fifty-nine thousand four hundred twenty-eight~~ fifty-nine thousand ~~four hundred twenty-eight~~ four hundred ~~twenty-eight~~ twenty-eight dollars through December 31, ~~2000~~, and ~~sixty-one~~ sixty-one ~~sixty-four~~ sixty-four thousand ~~one~~ one ~~two~~ two hundred ~~forty-two~~ thirty-three dollars thereafter.

SECTION 4. AMENDMENT. Section 54-27-08 of the North Dakota Century Code is amended and reenacted as follows:

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 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 ~~in order~~ to facilitate handling of such instruments by banks and other depositories. When ~~such~~ an order and warrant-check is signed by the state auditor, the state treasurer shall accept the order or warrant with ~~his~~ 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 ~~his~~ 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 ~~his~~ a voucher for the payment until the next ~~succeeding~~ settlement. With respect to electronic records and electronic signatures, the state treasurer shall utilize the services provided by the information technology department.

SECTION 5. LEGISLATIVE INTENT - PAYMENT OF NATIONAL ASSOCIATION OF STATE TREASURERS-RELATED ACTIVITIES. It is the intent of the legislative assembly that the state treasurer be prohibited from using state funds for activities related to the national association of state treasurers for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 26, 2001
Filed April 26, 2001

CHAPTER 6

HOUSE BILL NO. 1006

(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 allocations to the multistate tax compact fund; and to amend and reenact section 57-01-04 of the North Dakota Century Code, relating to the salary of the state tax 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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state 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, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

TAX COMMISSIONER

Salaries and wages	\$12,854,202
Operating expenses	4,282,461
Equipment	235,000
City tax administration fees	50,000
Motor fuels federal grant	393,729
Multistate tax commission	<u>316,000</u>
Total all funds	\$18,131,392
Less estimated income	<u>709,729</u>
Total general fund appropriation	\$17,421,663

Subdivision 2.

HOMESTEAD TAX CREDIT

Grants	4,540,813
Total general fund appropriation	\$4,540,813
Grand total general fund appropriation H.B. 1006	\$22,262,476

SECTION 2. TRANSFER. There is hereby 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 \$1,363,392 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. MULTISTATE TAX COMMISSION FUND. Notwithstanding any other provision of law, during the 2001-03 biennium the tax commissioner shall designate up to \$316,000 of revenue from collections attributable to participation in the multistate tax compact for deposit in the multistate tax commission fund and, upon receipt of funds so designated, the state treasurer shall deposit those funds in

the multistate tax commission fund. The state treasurer shall transfer any balance in the multistate tax commission fund on June 30, 2003, to the state general fund.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$300,000, or so much of the sum as may be necessary, to the state tax commissioner for the costs related to implementation of the provisions of House Bill No. 1399, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 5. AMENDMENT. Section 57-01-04 of the North Dakota Century Code is amended and reenacted as follows:

57-01-04. Salary. The annual salary of the state tax commissioner is ~~five-eight~~ sixty-eight thousand two hundred ~~sixty-two~~ seventy-seven dollars through ~~June 30, 2000~~ December 31, 2001, ~~fifty-nine~~ seventy-two thousand ~~four~~ three hundred ~~twenty-eight~~ seventy-four dollars through ~~December 31, 2000~~ June 30, 2002, and ~~sixty-six~~ seventy-three thousand ~~two~~ eight hundred ~~eighty-two~~ twenty-one dollars thereafter.

Approved May 4, 2001
Filed May 8, 2001

CHAPTER 7**HOUSE BILL NO. 1007**
(Appropriations Committee)
(At the request of the Governor)**LABOR COMMISSIONER**

AN ACT to provide an appropriation for defraying the expenses of the office 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 hereby 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, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$907,581
Operating expenses	154,199
Equipment	<u>16,604</u>
Total all funds	\$1,078,384
Less estimated income	<u>229,962</u>
Total general fund appropriation	\$848,422

Approved April 26, 2001
Filed April 26, 2001

CHAPTER 8

HOUSE BILL NO. 1008

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

PUBLIC SERVICE COMMISSION

AN ACT to provide an appropriation for defraying the expenses of the public service commission; to amend and reenact section 49-01-05 of the North Dakota Century Code, relating to the salary of public service commissioners; 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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the public service commission for the purpose of defraying the expenses of the public service commission, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$4,634,173
Operating expenses	1,152,662
Equipment	86,961
Grants	39,150
AML contractual services	<u>3,668,492</u>
Total all funds	\$9,581,438
Less estimated income	<u>5,724,433</u>
Total general fund appropriation	\$3,857,005

SECTION 2. AMENDMENT. Section 49-01-05 of the North Dakota Century Code is amended and reenacted as follows:

49-01-05. Salary of commissioners. The annual salary of a commissioner is ~~fifty-eight~~ sixty-six thousand ~~two~~ five hundred ~~sixty-two~~ nine dollars through ~~June 30, 2000~~ December 31, 2001, ~~fifty-nine~~ sixty-eight thousand ~~four~~ five hundred ~~twenty-eight~~ four dollars through ~~December 31, 2000~~ June 30, 2002, and ~~sixty-four~~ sixty-nine thousand ~~five~~ eight hundred ~~sixty-nine~~ seventy-four dollars thereafter. All fees received or charged by any commissioner for any act or service rendered in any official capacity must be accounted for and paid over by the commissioner monthly to the state treasurer and must be credited to the general fund of the state.

SECTION 3. APPROPRIATION. There is appropriated from federal funds the sum of \$27,560, or so much of the sum as may be necessary, to the public service commission for the "one-call" call before you dig program, for the period beginning with the effective date of this section and ending June 30, 2001.

SECTION 4. EMERGENCY. Section 3 of this Act is declared to be an emergency measure.

Approved April 13, 2001
Filed April 16, 2001

CHAPTER 9

HOUSE BILL NO. 1009

(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 project safe send user fees; and to amend and reenact sections 4-01-21, 19-18-02.1, and 19-18-04 of the North Dakota Century Code and to amend and reenact the new section to chapter 4-35 of the North Dakota Century Code as created by section 3 of House Bill No. 1328, as approved by the fifty-seventh legislative assembly, relating to the salary of the agriculture commissioner, the membership of the crop protection product harmonization and registration board, uses of the environment and rangeland protection fund, and pesticide registration fees.

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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the agriculture commissioner for the purpose of defraying the expenses of the commissioner of agriculture, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$3,513,495
Operating expenses	1,338,864
Equipment	30,400
Grants	161,700
Board of animal health	538,614
Ag mediation	1,075,808
Ag in the classroom	96,000
State meat inspection	631,750
Waterbank program	900,000
Pride of Dakota	157,050
Wildlife services	779,694
Safe send	599,369
Noxious weeds	<u>1,346,836</u>
Total all funds	\$11,169,580
Less estimated income	<u>6,798,184</u>
Total general fund appropriation	\$4,371,396

SECTION 2. AMENDMENT. Section 4-01-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-01-21. Salary of agriculture commissioner. The annual salary of the agriculture commissioner is ~~fifty-eight~~ sixty-six thousand ~~two~~ five hundred ~~sixty-two~~ nine dollars through ~~June 30, 2000~~ December 31, 2001, ~~fifty-nine~~ sixty-eight thousand ~~four~~ five hundred ~~twenty-eight~~ four dollars through ~~December 31, 2000~~ June 30, 2002, and ~~sixty-four~~ sixty-nine thousand ~~five~~ eight hundred ~~sixty-nine~~ seventy-four dollars thereafter.

³ **SECTION 3. AMENDMENT.** The new section to chapter 4-35 of the North Dakota Century Code as created by section 3 of House Bill No. 1328, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

Crop protection product harmonization and registration board - Duties - Grants.

1. The crop protection product harmonization and registration board consists of:
 - a. ~~the~~ The governor or the governor's designee; ;
 - b. ~~the~~ The agriculture commissioner, or the commissioner's designee;
 - c. ~~the~~ The chairman of the house agriculture committee, or the chairman's designee;
 - d. ~~the~~ The chairman of the senate agriculture committee, ~~one crop protection product manufacturing industry representative appointed by the chairman of the legislative council, and two consumers or~~ the chairman's designee;
 - e. A member of the house or senate agriculture committee who is not a member of the faction in which the committee chairman is a member, appointed by the legislative council chairman;
 - f. A crop protection product dealer in the state appointed by the governor from a list of three nominees submitted by the North Dakota agricultural association;
 - g. A consumer of crop protection products appointed by the governor from a list of three nominees submitted by the North Dakota grain growers association;
 - h. A consumer of crop protection products appointed by the governor from a list of three nominees submitted by the North Dakota oilseed council;
 - i. A representative of the crop protection product manufacturing industry appointed by the chairman of the legislative council; and
 - j. The director of the North Dakota state university agricultural experiment station.
2. The representative of the crop protection product manufacturing industry and the director of the agricultural experiment station shall serve as nonvoting members. The governor or the governor's designee shall serve as chairman of the board.
3. The board shall:

³ Section 4-35-30 was created by section 3 of House Bill No. 1328, chapter 75.

- a. Identify and prioritize crop protection product labeling needs;
 - b. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a];
 - c. Identify the data necessary to enable registration of a use to occur in a timely manner;
 - d. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section;
 - e. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
 - f. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and
 - g. Pursue any opportunities to make more crop protection product options available to agricultural producers in this state through any means the board determines advisable.
- ~~2.~~ 4. The board may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs.
- ~~3.~~ 5. The board may administer a grant program through which agriculture commodity groups ~~established under this title~~ may apply for funds to be used by the groups to address issues related to the registration of crop protection products. To be eligible for receipt of a grant, an applicant must submit an application to the board which requests a specific amount of funds, specifies the exact purposes for which the grant would be used, and provides a detailed timetable for the use of the grant funds. The board may impose any additional conditions it determines appropriate for grant recipients, including requiring periodic reports and furnishing of matching funds. The board may terminate funding of a previously approved grant at any time if the board is dissatisfied with the performance of the grant recipient.
- ~~4.~~ 6. The board may use not more than fifteen percent of the funds under its supervision for administrative purposes, including the cost of contracting for administrative services and reimbursement of board member expenses. The members of the board who are members of the legislative assembly are entitled to compensation from the legislative council for attendance at board meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.
- ~~5.~~ 7. The board may adopt rules to implement this section.

SECTION 4. AMENDMENT. Section 19-18-02.1 of the North Dakota Century Code is amended and reenacted as follows:

19-18-02.1. Environment and rangeland protection fund. The environment and rangeland protection fund is a special fund in the state treasury. The moneys in this fund may be used for rangeland improvement projects and to address issues relating to harmonization of crop protection product standards. ~~These~~ The rangeland improvement projects may include noxious weed control; ground water testing, analysis, protection, and improvement; analysis of food products for residues of pesticides and other materials; and analysis and disposal of unusable pesticides and pesticide containers.

SECTION 5. AMENDMENT. Section 19-18-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-18-04. (Effective through June 30, ~~2004~~ 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, 2001 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 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 6. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item in section 1 of this Act includes the sum of \$2,341,815, 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, 2001, and ending June 30, 2003.

SECTION 7. ESTIMATED INCOME - ANHYDROUS AMMONIA STORAGE INSPECTION FUND. The estimated income line item in section 1 of this Act includes the sum of \$139,775, 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, 2001, and ending June 30, 2003.

SECTION 8. ESTIMATED INCOME - GAME AND FISH FUND. The estimated income line item in section 1 of this Act includes the sum of \$668,000, 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, 2001, and ending June 30, 2003.

SECTION 9. SAFE SEND PESTICIDE AND PESTICIDE CONTAINER COLLECTION - USER FEES. The agriculture commissioner, in consultation with the advisory board for the safe send pesticide and pesticide container disposal program, shall charge a fee for collection of rinsate during the biennium beginning July 1, 2001, and ending June 30, 2003. The fees must be established at a level that will generate enough revenues to cover the cost of disposal associated with the rinsate collected for the biennium beginning July 1, 2001, and ending June 30, 2003. Collections from this fee must be deposited in the environment and rangeland protection fund.

SECTION 10. SAFE SEND PESTICIDE AND PESTICIDE CONTAINER COLLECTION - RECYCLING. The agriculture commissioner, in consultation with the advisory board for the safe send pesticide and pesticide container disposal program, shall research the potential of recycling select products collected during the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 28, 2001
Filed April 28, 2001

CHAPTER 10**HOUSE BILL NO. 1010**

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

INSURANCE COMMISSIONER

AN ACT to provide an appropriation for defraying the expenses of the insurance commissioner; to create and enact a new subsection to section 54-44.3-20 of the North Dakota Century Code, relating to employees exempt from the state classified service; and to amend and reenact section 26.1-01-09 of the North Dakota Century Code, relating to the salary 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 hereby 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, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$4,513,847
Operating expenses	1,637,196
Equipment	<u>119,355</u>
Total special funds appropriation	\$6,270,398

SECTION 2. APPROPRIATION - INSURANCE TAX PAYMENTS TO FIRE DEPARTMENTS AND NORTH DAKOTA FIREMEN'S ASSOCIATION. There is hereby appropriated out of any moneys in the insurance tax distribution fund in the state treasury, not otherwise appropriated, the sum of \$5,304,000, 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 firemen's association for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 3. BONDING FUND. Section 1 of this Act includes the sum of \$67,431, 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, 2001, and ending June 30, 2003.

SECTION 4. FIRE AND TORNADO FUND. Section 1 of this Act includes the sum of \$831,145, 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, 2001, and ending June 30, 2003.

SECTION 5. UNSATISFIED JUDGMENT FUND. Section 1 of this Act includes the sum of \$60,000, 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, 2001, and ending June 30, 2003.

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, 2001, and ending June 30, 2003.

SECTION 7. ANHYDROUS AMMONIA STORAGE FACILITY INSPECTION FUND.

Section 1 of this Act includes the sum of \$75,000, 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, 2001, and ending June 30, 2003.

SECTION 8. AMENDMENT. Section 26.1-01-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-01-09. Salary of commissioner. The annual salary of the commissioner is ~~fifty-eight~~ sixty-four thousand ~~two~~ seven hundred ~~sixty-two~~ forty-two dollars through ~~June 30, 2000~~ December 31, 2001, ~~fifty-nine~~ sixty-six thousand ~~four~~ six hundred ~~twenty-eight~~ eighty-four dollars through ~~December 31, 2000~~ June 30, 2002, and ~~sixty-two~~ sixty-eight thousand ~~eight~~ hundred ~~fifty-five~~ eighteen dollars thereafter.

⁴ **SECTION 9.** A new subsection to section 54-44.3-20 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Attorneys employed by the insurance commissioner.

Approved April 13, 2001
Filed April 16, 2001

⁴ Section 54-44.3-20 was also amended by section 44 of Senate Bill No. 2032, chapter 488.

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

AN ACT to provide an appropriation for defraying the expenses of the office 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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the securities commissioner for the purpose of defraying the expenses of the office of the securities commissioner, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$899,728
Operating expenses	210,713
Equipment	<u>10,800</u>
Total general fund appropriation	\$1,121,241

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 12

HOUSE BILL NO. 1012

(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 for legislative council studies; to provide an exception to section 54-44.1-06 of the North Dakota Century Code, relating to the preparation of the department of human services appropriations bill for the 2003-05 biennium; to provide statements of legislative intent; to provide an exception to section 54-16-04 of the North Dakota Century Code, relating to emergency commission approval for line item transfers; to provide for basic care facility rates; to create and enact a new subsection to section 50-10-06 of the North Dakota Century Code, relating to eligibility for children's special health services; to amend and reenact subsection 2 of section 25-02-01.1, subsection 3 of section 50-01.2-03.2, and section 50-09-06.1 of the North Dakota Century Code, relating to compensation for members of the state hospital governing body, county reimbursements, and assignment of support rights; to provide an effective 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 department of human services and its various divisions, for the purpose of defraying their expenses, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

MANAGEMENT

Salaries and wages	\$11,810,001
Operating expenses	34,511,962
Equipment	1,185,704
Capital improvements	1,308
Loan fund - DD	<u>2,261,556</u>
Total all funds	\$49,770,531
Less estimated income	<u>31,715,182</u>
Total general fund appropriation	\$18,055,349

Subdivision 2.

ECONOMIC ASSISTANCE

Salaries and wages	\$11,679,203
Operating expenses	17,297,140
Equipment	17,950
Capital improvements	2,543
Grants - assistance payments	126,393,606
Grants - medical assistance	<u>736,187,339</u>
Total all funds	\$891,577,781

Less estimated income	<u>678,799,617</u>
Total general fund appropriation	<u>\$212,778,164</u>

Subdivision 3.

PROGRAM AND POLICY

Salaries and wages	\$9,650,689
Operating expenses	11,388,152
Equipment	53,728
Capital improvements	789
Grants	<u>132,341,763</u>
Total all funds	<u>\$153,435,121</u>
Less estimated income	<u>123,325,366</u>
Total general fund appropriation	<u>\$30,109,755</u>

Subdivision 4.

NORTHWEST HUMAN SERVICE CENTER

Total all funds	\$8,157,433
Less estimated income	<u>4,083,037</u>
Total general fund appropriation	<u>\$4,074,396</u>

NORTH CENTRAL HUMAN SERVICE CENTER

Total all funds	\$14,201,485
Less estimated income	<u>5,797,056</u>
Total general fund appropriation	<u>\$8,404,429</u>

LAKE REGION HUMAN SERVICE CENTER

Total all funds	\$8,122,652
Less estimated income	<u>3,598,587</u>
Total general fund appropriation	<u>\$4,524,065</u>

NORTHEAST HUMAN SERVICE CENTER

Total all funds	\$18,677,059
Less estimated income	<u>11,195,028</u>
Total general fund appropriation	<u>\$7,482,031</u>

SOUTHEAST HUMAN SERVICE CENTER

Capital improvements	\$573,124
Human service center operations	<u>19,640,332</u>
Total all funds	<u>\$20,213,456</u>
Less estimated income	<u>11,119,701</u>
Total general fund appropriation	<u>\$9,093,755</u>

SOUTH CENTRAL HUMAN SERVICE CENTER

Total all funds	\$11,128,925
Less estimated income	<u>5,466,466</u>
Total general fund appropriation	<u>\$5,662,459</u>

WEST CENTRAL HUMAN SERVICE CENTER

Total all funds	\$18,616,938
Less estimated income	<u>10,452,773</u>
Total general fund appropriation	<u>\$8,164,165</u>

BADLANDS HUMAN SERVICE CENTER

Total all funds	\$9,535,626
Less estimated income	<u>5,127,922</u>
Total general fund appropriation	\$4,407,704

STATE HOSPITAL

Capital improvements	\$970,176
Operations	<u>50,154,275</u>
Total all funds	\$51,124,451
Less estimated income	<u>17,961,143</u>
Total general fund appropriation	\$33,163,308

DEVELOPMENTAL CENTER

Capital improvements	\$864,363
Operations	<u>39,823,524</u>
Total all funds	\$40,687,887
Less estimated income	<u>30,020,107</u>
Total general fund appropriation	\$10,667,780
Total all funds - subdivision 4	\$200,465,912
Total estimated income - subdivision 4	\$104,821,820
Total general fund appropriation - subdivision 4	\$95,644,092
Grand total general fund appropriation H.B. 1012	\$356,587,360
Grand total special fund appropriation H.B. 1012	\$938,661,985
Grand total all funds H.B. 1012	\$1,295,249,345

SECTION 2. LANDS AND MINERALS TRUST FUND. The amount of \$2,261,556, or so much of the sum as may be necessary, as appropriated in the developmentally disabled facility loan fund line item in 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, 2001, and ending June 30, 2003.

SECTION 3. DEVELOPMENTAL DISABILITIES REVOLVING LOAN FUND. There may be expended by the department of human services, on or before June 1, 2003, from the cash balance of, any payments deposited in, the revolving loan fund created under section 6-09.6-01, the sum of \$871,765, or so much of the sum as may be necessary, which is appropriated in section 1 of this Act.

SECTION 4. TRANSFER. Subject to the provisions of chapter 54-16, the director of the department of human services may transfer appropriation authority between agencies and institutions included in subdivisions 1 through 4 of section 1 of this Act.

SECTION 5. CORRELATION OF RESOURCES FOR DEPARTMENTAL CLIENTS. Notwithstanding section 4 of this Act, the director of the department of human services may transfer appropriation authority and authorized positions between agencies and institutions included within subdivision 4 of section 1 of this Act to correlate fiscal and staff resources with the flow of institutional residents and human service center clients between community-based programs and institutions. The transfers from human service centers require prior consultation with the regional human service center advisory boards.

SECTION 6. ALCOHOL AND DRUG EDUCATION PROGRAM - EXPENDITURE - LIMITATIONS. The moneys appropriated in the grants line item in

subdivision 3 of section 1 of this Act for the native American alcohol and drug abuse education program may not be spent for the services provided by the tribes to administer the program. The local grant recipient is required to provide matching equal to the grant amount with funding or in-kind service.

SECTION 7. DEPARTMENT OF HUMAN SERVICES - FUNDING OR EMPLOYEE TRANSFERS - REPORT TO FIFTY-EIGHTH LEGISLATIVE ASSEMBLY. The department of human services shall prepare and present a report to the appropriations committees of the fifty-eighth legislative assembly on any transfers of funding or employee full-time equivalent positions made between the department's subdivisions or institutions and human service centers during the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 8. LINE ITEM TRANSFER AUTHORITY. Notwithstanding section 54-16-04, the department of human services may transfer amounts of up to \$250,000 from the operating expenses line item in subdivision 1 of section 1 of this Act to the equipment line item in subdivision 1 of section 1 of this Act for the biennium beginning July 1, 2001, and ending June 30, 2003. The department shall notify the office of management and budget of each transfer.

SECTION 9. LEGISLATIVE INTENT - MEDICAL SERVICES - UTILIZATION REVIEW. It is the intent of the legislative assembly that the department of human services enhance the effectiveness of its utilization review efforts in the medical services program during the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 10. LEGISLATIVE INTENT - DEPARTMENT OF HUMAN SERVICES - SHARING OF WORKSTATIONS. It is the intent of the legislative assembly that the department of human services consider requiring the sharing of workstations by its employees for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 11. LEGISLATIVE INTENT - DEPARTMENT OF HUMAN SERVICES - TELEPHONE COST-SAVINGS. It is the intent of the legislative assembly that the department of human services consider distributing prepaid telephone calling cards to its employees for use when making allowable long-distance personal telephone calls when traveling on official state business during the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 12. LEGISLATIVE INTENT - DEPARTMENT OF HUMAN SERVICES - PRINTING COST-SAVINGS. It is the intent of the legislative assembly that the department of human services consider expanding its use of e-mail for distributing information to reduce printing costs for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 13. LEGISLATIVE INTENT - GENERAL FUND AND HEALTH CARE TRUST FUND MONEYS - SPENDING PRIORITY. It is the intent of the legislative assembly that for any programs receiving appropriations from both the general fund and health care trust fund, the department of human services spend moneys appropriated from the general fund before spending moneys from the health care trust fund for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 14. LEGISLATIVE INTENT - STATE HOSPITAL LANDFILL CLOSURE. It is the intent of the legislative assembly that the state hospital seek the assistance of the adjutant general in the closure of the state hospital landfill and that the adjutant general complete the project subject to the approval of the associated

general contractors of North Dakota for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 15. LEGISLATIVE INTENT - FEDERAL FAMILY CAREGIVER FUNDS. It is the intent of the legislative assembly that the department of human services determine the requirements related to the acceptance of federal family caregiver funds, including allowable uses, maintenance of effort, and future funding projections.

SECTION 16. LEGISLATIVE INTENT - PAYMENT SCHEDULE FOR CRITICAL ACCESS HOSPITALS. It is the intent of the legislative assembly that the department of human services implement a charge-based payment schedule for critical access hospitals, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 17. LEGISLATIVE COUNCIL STUDY - STATE ADMINISTRATION OF CHILD SUPPORT. The legislative council shall consider studying, during the 2001-02 interim, the feasibility and desirability of state administration of child support, including the fiscal effect on counties and the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 18. LEGISLATIVE COUNCIL STUDY - SENIOR CITIZEN MILL LEVY MATCHING PROGRAM. The legislative council shall consider studying during the 2001-02 interim, the senior citizen mill levy matching grant program. If chosen, the study must address the appropriateness of whether the program match a percentage of the total mills levied by each county or match funds only on the first mill levied by each county. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 19. LEGISLATIVE INTENT - NORTHEAST HUMAN SERVICE CENTER FUNDING. It is the intent of the legislative assembly that any budget adjustments made by the northeast human service center relating to the unspecified \$175,000 reduction in general fund support made by the fifty-seventh legislative assembly not be made in areas of the budget that provide funding for contracts with private providers for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 20. MEDICAID FUNDING - REPORTS TO BUDGET SECTION. The department of human services shall report to each meeting of the budget section during the 2001-02 interim on the status of actual medical assistance expenditures to projections based on legislative appropriations for the biennium beginning July 1, 2001, and ending June 30, 2003. Each report must include the department's medical services utilization review efforts and the effect of these efforts on utilization and expenditures. If the department of human services anticipates that actual expenditures will exceed the funding provided by the legislative assembly for medical assistance grants, the department shall report to the budget section on the department's efforts to manage the funds appropriated to the department to provide for the anticipated shortfall and, if necessary, seek budget section approval to spend funds at a level which would require a request for a general fund deficiency appropriation from the next legislative assembly.

⁵ **SECTION 21. DEPARTMENT OF HUMAN SERVICES APPROPRIATIONS BILL - EXECUTIVE BUDGET RECOMMENDATION.**

Notwithstanding North Dakota Century Code section 54-44.1-06, the office of the budget shall submit for introduction to the fifty-eighth legislative assembly the department of human services appropriations bill reflecting the same funding levels by line item and employee levels authorized by the fifty-seventh legislative assembly for the 2001-03 biennium. Any budget changes recommended by the office of the budget for the department of human services for the 2003-05 biennium must be presented to the appropriations committees of the fifty-eighth legislative assembly as a recommendation for change to the bill as introduced.

SECTION 22. COMPULSIVE GAMBLING SERVICES - CONTINGENT FUNDING.

The operating expenses line item in subdivision 3 of section 1 of this Act includes \$150,000 from the general fund for compulsive gambling services. The department of human services may spend \$50,000 of this funding for compulsive gambling services only if the mental health association of North Dakota certifies to the department of human services that it has received at least \$220,000 of funding from Indian gaming sources for compulsive gambling services during the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 23. STATE HOSPITAL LANDFILL CLOSURE - PROJECTED SAVINGS.

During the second year of the biennium beginning July 1, 2001, and ending June 30, 2003, the state hospital may use projected savings from other areas of the state hospital budget for the costs of closing the state hospital landfill. The state hospital may transfer appropriation authority between line items to provide the funding needed for the project, subject to emergency commission and budget section approval.

SECTION 24. Basic care facility private room rates. The department of human services shall allow a basic care facility to charge a higher rate for a private room used by a recipient of benefits under chapter 50-24.5 if the private room is not necessary to meet the resident's care needs; the resident, or a person acting on behalf of the resident, has requested the private room and the facility informs the person making the request, at the time of the request, of the amount of payment and that the payment must come from sources other than a resident's monthly income; and the payment does not exceed the amount charged to private pay residents.

SECTION 25. AMENDMENT. Subsection 2 of section 25-02-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The department, in consultation with the state hospital, shall create a state hospital governing body and shall by rules describe the powers and duties of the governing body. The department shall compensate members not employed by the department in the amount of ~~sixty-two~~ one hundred dollars ~~and fifty cents~~ per day and reimburse members for expenses incurred in attending meetings in the amounts provided by sections 44-08-04 and 54-06-09.

⁵ Section 21 was vetoed by the Governor, see chapter 587.

⁶ **SECTION 26. AMENDMENT.** Subsection 3 of section 50-01.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provisions of law, the department shall reimburse county social service boards for expenses of locally administered economic assistance programs in counties in which more than twenty percent of the caseload for these programs consists of people who reside on a federally recognized Indian reservation or property tax-exempt tribal trust lands. The reimbursement must be such that:
 - a. An affected county's expenses for locally administered economic assistance programs in excess of the statewide average of such costs, expressed in mills, for all other counties will be reimbursed at ~~one hundred percent~~ a percentage based on the level of legislative appropriations;
 - b. Each calendar year the affected counties will receive quarterly allocations based on the actual county expenses for the state fiscal year ending the previous June thirtieth and the most recent taxable valuations published pursuant to section 57-13-07 available on that date; and
 - c. The reimbursement will be calculated for each county and reported to the county social service board prior to August first of the year preceding the allocation; and.
 - d. ~~For calendar year 2000, up to fifteen percent of the social service block grant funds available to all counties during that calendar year or general fund equivalents of social service block grant funds must be used for part of this reimbursement. For the first six months of calendar year 2001, up to seven and one-half percent of the social service block grant funds available to all counties during that calendar year or general fund equivalents of social service block grant funds must be used for part of this reimbursement.~~

⁷ **SECTION 27. AMENDMENT.** Section 50-09-06.1 of the North Dakota Century Code, as amended in section 3 of House Bill No. 1108, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

50-09-06.1. Assignment of support rights. An application under this chapter is deemed to create and effect an assignment of all rights to support, which a family member or foster child may have or come to have, to the state agency. The assignment:

1. Is effective as to all current and accrued support obligations and periods of eligibility;

⁶ Section 50-01.2-03.2 was also amended by section 25 of House Bill No. 1015, chapter 15.

⁷ Section 50-09-06.1 was also amended by section 3 of House Bill No. 1108, chapter 418.

2. Is limited to the total cost of benefits provided to the family or foster child; ~~and~~
3. Terminates when eligibility ceases, except with respect to any support obligation unpaid at that time; and
4. Is not effective as to any child subject to a benefit cap imposed under section 50-09-29.

⁸ **SECTION 28.** A new subsection to section 50-10-06 of the North Dakota Century Code is created and enacted as follows:

Establish eligibility criteria for services under this chapter at one hundred eighty-five percent of the poverty line, except for criteria relating to phenylketonuria or maple syrup urine disease treatment services for which income is not to be considered when determining eligibility. For purposes of this chapter, "poverty line" has the same meaning as defined in section 50-29-01.

SECTION 29. EFFECTIVE DATE. Section 27 of this Act becomes effective January 1, 2002.

SECTION 30. EMERGENCY. Section 24 of this Act is declared to be an emergency measure. The department of human services shall authorize the basic care facility private room rate through emergency rulemaking.

Approved May 9, 2001
Filed May 10, 2001

⁸ Section 50-10-06 was also amended by section 8 of Senate Bill No. 2239, chapter 260.

CHAPTER 13

HOUSE BILL NO. 1013

(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 division of independent study, the school for the deaf, the school for the blind, the state library, and the state board for vocational and technical education; to provide statements of legislative intent; and to amend and reenact subsection 1 of section 15-40.1-16 or in the alternative to amend and reenact subsection 1 of section 15.1-27-26, and section 15.1-02-02 of the North Dakota Century Code, relating to transportation payments and the salary of the superintendent of public instruction.

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 division of independent study, the school for the deaf, the school for the blind, and the state library for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

DEPARTMENT OF PUBLIC INSTRUCTION

Salaries and wages	\$8,985,148
Operating expenses	15,310,080
Equipment	344,140
Grants - Foundation aid and transportation	473,971,648
Grants - Teacher compensation payments	35,036,000
Grants - Revenue supplement payments	2,200,000
Grants - Tuition apportionment	67,239,025
Grants - Special education	49,898,695
Grants - Other grants	149,420,263
Geographic education	100,000
Total all funds	\$802,504,999
Less estimated income	232,691,705
Total general fund appropriation	\$569,813,294

Subdivision 2.

DIVISION OF INDEPENDENT STUDY

Salaries and wages	\$3,257,968
Operating expenses	1,718,498
Equipment	190,000
Capital improvements	55,000
Total all funds	\$5,221,466

Less estimated income	4,353,250
Total general fund appropriation	<u>\$868,216</u>

Subdivision 3.

STATE LIBRARY

Salaries and wages	\$2,084,108
Operating expenses	1,135,660
Equipment	40,000
Grants	<u>1,453,745</u>
Total all funds	<u>\$4,713,513</u>
Less estimated income	<u>1,598,857</u>
Total general fund appropriation	<u>\$3,114,656</u>

Subdivision 4.

SCHOOL FOR THE DEAF

Salaries and wages	\$4,888,058
Operating expenses	1,156,267
Equipment	60,190
Capital improvements	<u>45,410</u>
Total all funds	<u>\$6,149,925</u>
Less estimated income	<u>1,095,624</u>
Total general fund appropriation	<u>\$5,054,301</u>

Subdivision 5.

SCHOOL FOR THE BLIND

Salaries and wages	\$2,725,158
Operating expenses	662,238
Equipment	60,000
Capital improvements	<u>25,416</u>
Total all funds	<u>\$3,472,812</u>
Less estimated income	<u>1,357,821</u>
Total general fund appropriation	<u>\$2,114,991</u>
Grand total general fund appropriation H.B. 1013	\$580,978,458
Grand total special funds appropriation H.B. 1013	\$241,097,257
Grand total all funds appropriation H.B. 1013	<u>\$822,075,715</u>

SECTION 2. APPROPRIATION - TUITION APPORTIONMENT. The sum of \$67,239,025, or such greater or lesser sums as become available, included in the grants - tuition apportionment and estimated income line items in subdivision 1 of section 1 of this Act, are appropriated to the department of public instruction out of any moneys in the state tuition fund in the state treasury to the public schools of this state as provided in section 2 of article IX of the Constitution of North Dakota and chapter 15-44 for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 3. EXPENDITURE AUTHORITY. The superintendent of public instruction may expend funds appropriated in the foundation aid and transportation and special education grants line items in subdivision 1 of section 1 of this Act in payment of grants for education services that were due in the 1999-2001 biennium but which were not filed, claimed, or properly supported by the education provider in question until after June 30, 2001.

SECTION 4. RED RIVER VALLEY WRITING PROJECT. The operating expenses line item in subdivision 1 of section 1 of this Act includes \$20,000 from the

general fund which must be used to support the Red River valley writing project during the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 5. STANDARDS-BASED STUDENT TESTING. The operating expenses line item in subdivision 1 of section 1 of this Act includes \$1,217,928 from the general fund which must be used to develop and administer student tests aligned with the state content standards and to report the results of the tests during the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 6. COMPENSATION PAYMENTS TO TEACHERS AT STATE INSTITUTIONS. In addition to amounts otherwise appropriated for salary increases for teachers at the division of independent study, the school for the deaf, and the school for the blind, the amounts appropriated for salaries and wages in subdivisions 2, 4, and 5 of section 1 of this Act include the following general fund amounts which must be used to increase teacher compensation by \$1,000 per year the first year of the biennium and by an additional \$2,000 per year the second year of the biennium:

Division of independent study	\$72,800
School for the deaf	\$74,000
School for the blind	\$56,200

SECTION 7. LEGISLATIVE INTENT - FULL-TIME EQUIVALENT POSITIONS. It is the intent of the fifty-seventh legislative assembly that the department of public instruction base budget request for the biennium beginning July 1, 2003, and ending June 30, 2005, include no more than 94.25 full-time equivalent positions.

SECTION 8. LEGISLATIVE INTENT - DISTRIBUTION OF SPECIAL EDUCATION AID. It is the intent of the legislative assembly that the amount included in the grants - special education line item in subdivision 1 of section 1 of this Act be distributed as follows:

1. Twelve million six hundred sixty-five thousand 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 15-40.1-07.6 or 15.1-27-10, excluding reimbursements for student contracts, boarding care, and gifted and talented programs. State special education payments distributed as required by section 15-40.1-07.6 or 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 9. LEGISLATIVE INTENT - TECHNOLOGY GRANTS. It is the intent of the legislative assembly that the funds appropriated in subdivision 1 of section 1 of this Act include \$4,037,500 for grants to schools for technology or teacher professional development-related expenditures.

SECTION 10. PAYMENTS FOR LIMITED ENGLISH PROFICIENT STUDENTS. Payments to school districts educating limited English proficient students, as required by section 15-40.1-07.7 or 15.1-27-12, must be paid using up to \$650,000 of the amount appropriated in subdivision 1 of section 1 of this Act for grants - foundation aid and transportation.

SECTION 11. INDIRECT COST ALLOCATION. Notwithstanding section 54-44.1-15, the department of public instruction may deposit indirect cost recoveries in its operating account.

SECTION 12. DISPLACED HOMEMAKER FUND. The amount of \$251,747, 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 displaced homemaker fund for the purpose of providing services for displaced homemakers as provided in chapter 14-06.1 for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 13. GRANTS. The line item entitled grants in subdivision 3 of section 1 of this Act includes \$888,745 for aid to public libraries of which no more than one-half is to be expended during the fiscal year ending June 30, 2002.

SECTION 14. FEES DEPOSITED IN OPERATING FUND. Any moneys included in estimated income in subdivision 5 of section 1 of this Act, collected for subscription fees or braille fees, must be deposited in the school for the blind operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

SECTION 15. AMENDMENT. If House Bill No. 1045 does not become effective, subsection 1 of section 15-40.1-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. There must be paid from state funds to each school district providing schoolbus transportation in contract schoolbuses or in district-owned and operated schoolbuses, and to school districts with students riding commercial buses to and from school, the following amounts:
 - a. For schoolbuses and school vehicles transporting students who live outside the incorporated limits of the city in which the students' school is located, a sum equal to twenty-five cents per mile [1.61 kilometers] for vehicles having a capacity of nine or fewer students and sixty-seven cents per mile [1.61 kilometers] for schoolbuses having a capacity of ten or more students ~~and~~, for schoolbuses and school vehicles having a capacity of nine or fewer students and transporting students who live within the incorporated limits of a city in which the students' school is located, a sum equal to twenty-five cents per mile [1.61 kilometers], and for schoolbuses and school vehicles having a capacity of ten or more students and transporting students who live within the incorporated limits of a city in which the students' school is located, a sum equal to thirty-five cents per mile [1.61 kilometers]. School districts qualifying for payments for buses having a capacity of ten or more students are entitled to an amount equal to forty cents per day for

each public school student living outside the city limits who is transported in such buses.

- b. For students who ride schoolbuses or commercial buses to or from school and who live within the incorporated limits of the city within which the school that the students attend is located, a sum equal to twenty cents per student per one-way trip.

The mileage payments provided for in this subsection must be made to each school district for transporting students to and from school. Payments may be made only to school districts operating schoolbuses in accordance with the laws of this state relating to standards for schoolbuses, and to the qualifications of schoolbus drivers. Certification as to compliance with the laws of this state in regard to schoolbuses and their drivers must be made in such manner and detail as the superintendent of public instruction may require at the time an application is made for payments provided under this subsection.

SECTION 16. AMENDMENT. Section 15.1-02-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-02-02. Salary. The annual salary of the superintendent of public instruction is ~~fifty-nine~~ sixty-nine thousand ~~four~~ six hundred ~~thirty-seven~~ forty-eight dollars through ~~June 30, 2000~~ December 31, 2001, ~~sixty~~ sixty-seven thousand ~~six~~ six hundred ~~twenty-six~~ sixteen dollars through ~~December 31, 2000~~ June 30, 2002, and ~~sixty-seven~~ sixty-seven thousand ~~six~~ four hundred ~~nineteen~~ thirty-four dollars thereafter.

⁹ **SECTION 17. AMENDMENT.** Subsection 1 of section 15.1-27-26 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

1. Each school district providing transportation to students in contract schoolbuses or in district-owned and operated schoolbuses, and each school district with students riding commercial buses to and from school is entitled to receive the following amounts:
 - a. Twenty-five cents per mile [1.61 kilometers] for each schoolbus and school vehicle having a capacity of nine or fewer students and transporting students who reside outside the incorporated limits of the city in which the students' school is located.
 - b. Sixty-seven cents per mile [1.61 kilometers] for each schoolbus and school vehicle having a capacity of ten or more students and transporting students who reside outside the incorporated limits of the city in which the students' school is located.
 - c. Twenty-five cents per mile [1.61 kilometers] for each schoolbus and school vehicle having a capacity of nine or fewer students and

⁹ Section 15.1-27-26 was created by section 11 of House Bill No. 1045, chapter 181.

transporting students who reside within the incorporated limits of a city in which the students' school is located.

- d. Thirty-five cents per mile [1.61 kilometers] for each schoolbus and school vehicle having a capacity of ten or more students and transporting students who reside within the incorporated limits of a city in which the students' school is located.
- e. Twenty cents for each one-way trip by a student who rides a schoolbus or a commercial bus to or from school and who resides within the incorporated limits of the city in which the student's school is located.

SECTION 18. APPROPRIATION - STATE BOARD FOR VOCATIONAL AND TECHNICAL EDUCATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$13,000, or so much of the sum as may be necessary, to the state board for vocational and technical education for the purpose of providing grants to support vocational education programs for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved May 4, 2001
Filed May 8, 2001

CHAPTER 14**HOUSE BILL NO. 1014**

(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, 2001, and ending June 30, 2003, as follows:

Total all funds	\$2,948,096
Less estimated income	<u>2,171,548</u>
Total general fund appropriation	\$776,548

Approved April 13, 2001

Filed April 13, 2001

CHAPTER 15

HOUSE BILL NO. 1015 (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 other appropriations; to provide for various transfers and financial transactions; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide statements of legislative intent; to provide a conditional exemption for certain state property from special assessments for flood control; to provide for additional lodging reimbursement for members of the legislative assembly; to provide levee protection funding authority; to provide for forgiveness of the Fargo family healthcare center debt; to provide for a legislative council study; to create and enact a new section to chapter 15-10, a new section to chapter 54-44.1, and a new section to chapter 65-04 of the North Dakota Century Code, relating to local fund sources for capital construction projects, new building construction cost-benefit analyses, and a state entities workers' compensation account; to amend and reenact section 6-08.3-13, subsection 3 of section 50-01.2-03.2, section 54-16-01, and section 54-23.2-09 of the North Dakota Century Code, relating to interstate banking, county reimbursements, membership of the emergency commission, and provision of 911 services by the state radio communications division; to repeal section 18 of chapter 37 of the 1995 Session Laws and section 12 of chapter 15 of the 1997 Session Laws, relating to the provision of 911 services by the state radio communications division; 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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the office of management and budget for the purpose of defraying their expenses, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

OFFICE OF MANAGEMENT AND BUDGET

Salaries and wages	\$12,018,846
Operating expenses	9,696,346
Equipment	171,000
Capital improvements	1,320,620
Grants	274,000
Statewide compensation plan	<u>5,000,000</u>
Total all funds	\$28,480,812
Less estimated income	<u>9,592,120</u>
Total general fund appropriation	\$18,888,692

Subdivision 2.

STATE RADIO COMMUNICATIONS

Salaries and wages	\$2,655,238
Operating expenses	1,870,810
Equipment	<u>314,136</u>
Total all funds	\$4,840,184
Less estimated income	<u>524,432</u>
Total general fund appropriation	\$4,315,752
Grand total general fund appropriation H.B. 1015	\$23,329,444
Grand total special funds appropriation H.B. 1015	\$10,116,552
Grand total all funds appropriation H.B. 1015	\$33,445,996

SECTION 2. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES.

There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$125,000, or so much of the sum as may be necessary, to the department of human services for the purpose of reimbursing counties with economic assistance administrative costs in excess of the statewide average, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 3. 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 subdivision 1 of 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, 2001, and ending June 30, 2003.

SECTION 4. EXEMPTION. The fiscal management appropriation contained in subdivision 1 of section 1 of chapter 37 of the 1999 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, 2001, and ending June 30, 2003.

SECTION 5. SPECIAL COMPENSATION ADJUSTMENTS FOR CLASSIFIED STATE EMPLOYEES. It is the intent of the fifty-seventh legislative assembly that the statewide compensation plan appropriation included in subdivision 1 of section 1 of this Act be used for market equity compensation adjustments for classified state employees. The special market equity adjustments are to begin with the month of July 2001, to be paid in August 2001. The special market equity adjustments are to be independent of any general salary increase provided by this legislative assembly.

The special market equity increases are to be prioritized based on equity for employees whose salaries are furthest from their respective salary range midpoints effective July 1, 2001. Special market equity increases may not be given to employees whose salary exceeds the midpoints of their assigned salary ranges effective July 1, 2001.

Probationary employees are eligible for the special market equity increases. Employees whose documented performance levels do not meet standards are not eligible for the special market equity increases.

The central personnel division shall provide a model base plan to each agency. Agencies may adopt the model plan, adopt the model plan with exceptions, or offer an alternative plan that meets the intent outlined in this section.

Upon adoption of an appropriate plan and application to the central personnel division, the division shall transfer appropriated general funds or special fund spending authority for the increases to the agencies.

SECTION 6. INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES. It is the intent of the fifty-seventh legislative assembly that 2001-03 compensation adjustments for permanent state employees are to be increases of a minimum of \$35 per month, beginning with the month of July 2001, to be paid in August 2001, and a minimum of \$35 per month, beginning with the month of July 2002, to be paid in August 2002. Any increases greater than \$35 per month may not be given across-the-board and must be based on merit and equity. Each agency appropriation is increased by 3.0 percent the first year of the 2001-03 biennium and 2.0 percent the second year of the 2001-03 biennium.

Employees whose documented performance levels do not meet standards are not eligible for the general or additional increases.

Probationary employees are not entitled to the general or additional increases. However, probationary employees may be given all or a portion of the increases effective July, paid in August, or upon completion of probation, at the discretion of the appointing authority.

During the biennium, no salary increase other than the \$35 per month in July 2001 and \$35 per month in July 2002 may be given to an employee whose salary exceeds or would exceed the salary range maximum.

It is the intent of the fifty-seventh legislative assembly that the workers compensation bureau provide pay raises based on merit and performance throughout the 2001-03 biennium.

Agency salaries and wages appropriations are increased in total by approximately two percent for the 2001-03 biennium relating to increased health insurance benefit costs.

SECTION 7. INTENT. Within the authority included in subdivision 1 of section 1 of this Act, are the following grants and special items:

Boys and girls clubworks	\$53,000
State contingencies	500,000
State memberships and related expenses	333,200
Firemen's association	126,000
Unemployment insurance	1,200,000
Capitol grounds planning commission	25,000
State consultant	120,000

SECTION 8. TRANSFER. During the biennium beginning July 1, 2001, and ending June 30, 2003, the director of the office of management and budget is authorized to transfer special funds to the general fund as follows:

Land and minerals trust fund	\$3,545,102
Financial institutions regulatory fund	300,000

SECTION 9. DEVELOPMENTAL DISABILITIES REVOLVING LOAN FUND - AUTHORITY TO SELL LOANS - TRANSFERS. At the request of the director of the office of management and budget, the executive director or the department of human services shall sell such loans in the developmental disabilities revolving loan fund created under North Dakota Century Code section 6-09.6-01, as may be necessary

to the Bank of North Dakota to provide \$2,000,000, or so much thereof as may be necessary, with the proceeds to be deposited in the general fund.

SECTION 10. 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 subdivision 1 of section 1 of this Act, is from the fire and tornado fund.

SECTION 11. BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND. During the biennium ending June 30, 2003, 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 shall come from accumulated undivided profits. The moneys shall be transferred in the amounts and at such times as requested by the director of the office of management and budget.

No transfers may be made that would reduce the Bank's capital structure below \$140,000,000.

SECTION 12. CONTINGENT BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND - BUDGET SECTION APPROVAL. If, during the biennium ending June 30, 2003, the director of the office of management and budget determines via revised projections that general fund revenue collections will not meet the revenues as forecast in the March 2001 legislative forecast, then 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 as 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 \$25,000,000 or the revenue shortfall of actual collections compared to the March 2001 legislative forecast.

No transfers may be made that would reduce the Bank's capital structure below \$140,000,000.

SECTION 13. STUDENT LOAN TRUST TRANSFER TO STATE GENERAL FUND. The industrial commission shall transfer to the general fund in the state treasury, the sum of \$9,000,000 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, 2001, and ending June 30, 2003, 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 14. FEDERAL PROGRAM TERMINATIONS - BLOCK GRANT - FUNDING REDUCTIONS - RELATED PROGRAM REDUCTIONS - REPORTS TO THE BUDGET SECTION. If the federal government during the 2001-03 biennium terminates funding for any program administered by an agency, department, or institution of the state of North Dakota, the agency, department, or institution, subject to budget section approval, may terminate the program and not replace the reduction in federal funds with state funds, notwithstanding any other provision of law. If the federal government combines funding for separate programs in a block grant resulting in a reduction of total federal funds available for those programs, the administering agency, department, or institution may, subject to budget section approval, prioritize or reprioritize programs as necessary in making programmatic

reductions. The agency, department, or institution may administer funds available under a new federal block grant or similar measure, consistent with the terms of that measure, notwithstanding any other provision of law intended to conform to or implement the provisions of the repealed federal Act, and shall report any program terminations, reductions, or changes resulting from this section to the budget section of the legislative council for its approval.

SECTION 15. LEGISLATIVE INTENT - STATEWIDE RADIO SYSTEM ENGINEERING PLAN. It is the intent of the legislative assembly that state radio communications may request a transfer of \$100,000 from the state contingency appropriation of the emergency commission for matching funds from federal or other sources for developing a statewide radio system engineering plan during the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 16. TRANSFER OF STATE CONTINGENCY APPROPRIATION. Notwithstanding sections 54-16-04 and 54-16-09, the office of management and budget is authorized to transfer \$160,000 from the state contingency appropriation of the emergency commission to the emergency fund of the office of the adjutant general during the time period beginning with the effective date of this Act and ending on June 30, 2001.

SECTION 17. City flood control special assessment exemption for state property. 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.

SECTION 18. ADDITIONAL LODGING REIMBURSEMENT FOR APRIL 2001 - 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-seventh 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-seventh legislative assembly is in session during the month of April 2001.

SECTION 19. LEVEE PROTECTION FUNDING AUTHORITY. The state water commission may use up to \$5,000,000 from the resources trust fund and from bond proceeds to provide a cost share for constructing and improving levees at Devils Lake during the biennium beginning July 1, 2001, and ending June 30, 2003. This authority is for the nonfederal cost share of any Devils Lake levee construction or improvement project, however, this authority exists only if no other funds, whether from state, federal, or local sources, may be used by the state water commission to satisfy the project's nonfederal cost share. If bonds are issued, the state water commission may use an amount over \$5,000,000 necessary to cover the cost of issuing the bonds. To the extent money is used under this section, the \$20,000,000 cap in subsection 1 of section 14 of House Bill No. 1023, and the \$67,800,000 cap in section 16 of House Bill No. 1023 is increased by the amount used. 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.

¹⁰ **SECTION 20. LEGISLATIVE INTENT - ELIMINATION OF CERTAIN DEPUTY POSITIONS IN 2003-05 BIENNIUM.** It is the intent of the legislative assembly that the appropriations measures submitted to the fifty-eighth legislative assembly do not include funding for the positions of deputies in any agency with fewer than thirty full-time equivalent positions for the 2003-05 biennium. It is the intent of the legislative assembly that the governor, when submitting the budget for the 2003-05 biennium, include legislation to amend North Dakota Century Code section 44-03-01 and any other appropriate statutory provisions to eliminate the authority to appoint a deputy for any state officer whose office has fewer than thirty full-time equivalent positions authorized for the 2003-05 biennium.

SECTION 21. FORGIVENESS OF FARGO FAMILY HEALTHCARE CENTER DEBT - BUDGET SECTION APPROVAL. The university of North Dakota school of medicine and health sciences shall forgive the amount of debt owed by the Fargo family healthcare center in an amount not to exceed \$395,000 upon adoption by the family healthcare center of a plan to address sustainability of programs and services at the family healthcare center, approval of the plan by the budget section of the legislative council, adoption by the city of Fargo of a plan to provide support to the family healthcare center, and forgiveness by the city of Fargo of at least \$100,000 in family healthcare center debt relating to rental expenses and approval by the budget section. The family healthcare center plan to address sustainability of programs and services must include information regarding immediate steps taken to reduce expenses, implementation of consultants' recommendations concerning internal operations and family healthcare center board functions, the center's role in the community including the identification of community support, core services, noncritical services to be reduced, and enhanced fundraising capacity and organizational capacity. The plan must be presented to and approved by the budget section before the budget section considers approval of the debt writeoff.

SECTION 22. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying during the 2001-02 interim health insurance company benefit limitations, including maximum payments or reimbursements for prescribed medicines and treatments and the effect of limiting benefit payments or reimbursements on consumers, family members, and individuals with incurable illnesses. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 23. AMENDMENT. Section 6-08.3-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08.3-13. Interstate banking authorization. This chapter specifically authorizes, in accordance with section 3 of the Bank Holding Company Act of 1956 [12 U.S.C. 1842], and section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 [Pub. L. 103-328; 108 Stat. 2338; 12 U.S.C. 1811 et seq.], interstate banking in this state. However, to the extent a state imposes a restriction on the ability of a North Dakota bank holding company to acquire a bank in that state and the restriction is based on the length of time either bank has existed, that restriction must apply to any acquisition of a North Dakota bank by a bank holding company located in that state but does not apply to any bank established in this state on July 31, 1997.

¹⁰ Section 20 was vetoed by the Governor, see chapter 588.

SECTION 24. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Capital construction projects - Local fund sources - Local matching funds - Report to budget section. If any institution under the control of the state board of higher education undertakes a capital construction project, including any renovation or expansion, with the approval of the legislative assembly, all local funds to be used for the project must be derived from sources that have been presented to and approved by the legislative assembly or the budget section pursuant to section 15-10-12.1. The source of any local matching funds required for state-funded or bonded projects must be funds raised and designated for the project and may not include funding from the state general fund, state and federal grant and contract funds, tuition or fees, endowment or investment income, institutional sales and services income including indirect and administrative costs, or transfers or loans from other institutions' funds or agency funds unless the institution has received prior approval from the legislative assembly or from the budget section pursuant to section 15-10-12.1. Each institution undertaking a capital construction project that was approved by the legislative assembly and for which local funds are to be used shall present a biennial report to the budget section of the legislative council detailing the source of all funds used in the capital construction project including local funds. This section applies to projects approved after July 1, 2001.

¹¹ **SECTION 25. AMENDMENT.** Subsection 3 of section 50-01.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provisions of law, the department shall reimburse county social service boards for expenses of locally administered economic assistance programs in counties in which more than twenty percent of the caseload for these programs consists of people who reside on a federally recognized Indian reservation or property tax-exempt tribal trust lands. The reimbursement must be such that:
 - a. An affected county's expenses for locally administered economic assistance programs in excess of the statewide average of such costs, expressed in mills, for all other counties will be reimbursed at ~~one hundred~~ ninety percent;
 - b. Each calendar year the affected counties will receive quarterly allocations based on the actual county expenses for the state fiscal year ending the previous June thirtieth and the most recent taxable valuations published pursuant to section 57-13-07 available on that date; and
 - c. The reimbursement will be calculated for each county and reported to the county social service board prior to August first of the year preceding the allocation; ~~and~~.
 - d. ~~For calendar year 2000, up to fifteen percent of the social service block grant funds available to all counties during that calendar year~~

¹¹ Section 50-01.2-03.2 was also amended by section 26 of House Bill No. 1012, chapter 12.

~~or general fund equivalents of social service block grant funds must be used for part of this reimbursement. For the first six months of calendar year 2001, up to seven and one-half percent of the social service block grant funds available to all counties during that calendar year or general fund equivalents of social service block grant funds must be used for part of this reimbursement.~~

SECTION 26. AMENDMENT. Section 54-16-01 of the 1999 Supplement to 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, 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 may serve as a member of the commission in the place of the chairman of the legislative council at the request of the chairman of the legislative council 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 27. AMENDMENT. Section 54-23.2-09 of the 1999 Supplement to 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. Each county currently receiving 911 services from state radio communications shall abide by the standards established by the governor's emergency services advisory committee law.

SECTION 28. A new section to chapter 54-44.1 of the North Dakota Century Code is created and enacted as follows:

Office of the budget and information technology department - New building construction cost-benefit analyses. The office of the budget shall complete a cost-benefit analysis for each new building construction project included in budget requests submitted by state agencies, departments, and institutions. The analysis must review options for co-locating with other state agencies, departments, or institutions and consider information on related technology costs and savings. The office of the budget shall obtain the assistance of the information technology department, and that department shall review the technology costs and savings involved in the proposed building and provide the analysis to the office of the budget. The office of the budget shall report on the cost-benefit analyses for building projects

included in the governor's budget recommendation to the legislative assembly at the same time as the governor's budget and revenue proposals are presented.

SECTION 29. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

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 30. REPEAL. Section 18 of chapter 37 of the 1995 Session Laws and section 12 of chapter 15 of the 1997 Session Laws are repealed.

SECTION 31. EXPIRATION DATE. Sections 19 and 29 of this Act are effective through June 30, 2003, and after that date are ineffective.

SECTION 32. EMERGENCY. Sections 16 and 18 of this Act are declared to be an emergency measure.

Approved May 9, 2001

Filed May 10, 2001

CHAPTER 16

HOUSE BILL NO. 1016 (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; and to amend and reenact subsection 2 of section 37-17.1-07.1 of the North Dakota Century Code, relating to the termination of the fee system for the hazardous chemicals preparedness and response program.

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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the division of emergency management under the supervision of the adjutant general for the purpose of defraying its expenses, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$2,611,942
Operating expenses	923,692
Equipment	156,400
Grants	<u>67,141,954</u>
Total all funds	\$70,833,988
Less estimated income	<u>69,870,828</u>
Total general fund appropriation	\$963,160

SECTION 2. STATE HAZARDOUS MATERIAL PREPAREDNESS AND RESPONSE FUND. The estimated income line item in section 1 of this Act includes \$200,000 from the state hazardous material preparedness and response fund for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 3. AMENDMENT. Subsection 2 of section 37-17.1-07.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Establishment of funds.
 - a. State hazardous chemicals preparedness and response fund. There is ~~hereby~~ created in the state treasury a nonlapsing restricted account to be known as a state hazardous chemicals preparedness and response fund. The fund consists of revenue collected from the state hazardous chemical fee system and funds appropriated by the general assembly. Moneys in the fund shall be appropriated biennially to the division of emergency management for carrying out the purposes, goals, and objectives of SARA title III, and the state hazardous chemicals preparedness and response program.

- b. County hazardous chemicals preparedness and response account. The county treasurer of each county shall establish a nonlapsing restricted account, to be known as the county hazardous chemicals preparedness and response account. The county hazardous chemicals preparedness and response account consists of revenue from the state hazardous chemicals fee system, county, federal or state funds, grants, and any private donations provided to finance the county hazardous chemicals preparedness and response program.
- c. Facility fee system. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of emergency management by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40 CFR 355.20 or its successor which is required under section 312 of SARA, title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40 CFR 370.20. The maximum fee for a facility under this section is one hundred fifty dollars. The division of emergency management shall transfer to the county hazardous chemicals preparedness and response account one-half of the funds collected from the state's hazardous chemicals fee system.
- d. Exemptions. The owners or operators of family farm enterprises that are not engaged in the retail or wholesale of hazardous chemicals and facilities owned by the state or local governments are exempt from the fee under subdivision c. For purposes of this section, the terms "family farm" and "farmer" have the same meaning as set forth in section 6-09.11-01.
- e. Accept funding. The state and county governments are authorized to accept and may deposit grants, gifts, and federal funds into the hazardous chemicals preparedness and response fund and accounts for the purpose of carrying out the hazardous chemicals preparedness and response program.
- f. Definition. "Hazardous chemical" means as defined in 40 CFR 355.20 and 29 CFR 1910.1200.
- g. ~~Termination of fee system. The fee system in this section terminates ten years after July 7, 1991, unless reestablished by the legislative assembly by statute.~~
- h. City fee system. The state hazardous chemicals fee system does not supersede a city fee system for hazardous chemicals.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 17

HOUSE BILL NO. 1017

(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 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 adjutant general's office for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$3,507,859
Operating expenses	2,967,722
Equipment	50,000
Capital improvements	11,607,950
Grants	348,026
Civil air patrol	109,730
Civil air patrol - Workers' compensation payment	9,186
Tuition and enlistment compensation	1,007,500
Air guard contract	5,960,184
Army guard contract	<u>14,665,661</u>
Total all funds	\$40,233,818
Less estimated income	<u>31,242,854</u>
Total general fund appropriation	<u>\$8,990,964</u>

SECTION 2. APPROPRIATION. There is appropriated any funds received by the adjutant general from federal and private sources for the purpose of operating the North Dakota veterans' cemetery at or adjacent to Fort Abraham Lincoln state park for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 3. EMERGENCY. The line item entitled capital improvements in section 1 of this Act is declared to be an emergency measure.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 18**HOUSE BILL NO. 1018**

(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 its various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$3,232,447
Operating expenses	1,472,000
Equipment	200,000
Capital improvements	50,000
Grants	200,000
Contingency	<u>300,000</u>
Total appropriation from seed department fund	\$5,454,447

SECTION 2. APPROPRIATION LINE ITEM TRANSFERS. Upon approval of the state seed commission, the state seed department may transfer from the contingency line item in its appropriation to all other line items except the capital improvement line item. The commission shall notify the office of management and budget of each transfer.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 19

HOUSE BILL NO. 1019

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

GAME AND FISH DEPARTMENT

AN ACT to provide an appropriation for defraying the expenses of the state game and fish 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 out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state game and fish department for the purpose of defraying the expenses of the various divisions of the department, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$13,889,059
Operating expenses	8,320,714
Equipment	793,505
Capital improvements	1,259,486
Grants	3,578,050
Noxious weed control	250,000
Land habitat and deer depredation	5,138,476
Grants, gifts, and donations	150,000
Nongame wildlife conservation	120,000
Waterbank program	200,000
Wildlife services	400,000
Lonetree reservoir	1,220,351
Total special funds appropriation	<u>\$35,319,641</u>

SECTION 2. LAND HABITAT AND DEER DEPREDATION. The amount of \$2,930,036, or such lesser amount as may be available, for the line item entitled land habitat and deer depredation in section 1 of this Act, is from the habitat and depredation fund, to lease privately owned lands for wildlife habitat to reestablish wildlife population, to improve wildlife habitat on private lands, and to alleviate big game and furbearer depredation for the biennium beginning July 1, 2001, and ending June 30, 2003. These funds may be spent only for the purposes and using guidelines contained in sections 20.1-02-05 and 20.1-03-12.1.

SECTION 3. NONGAME WILDLIFE. The amount of \$75,000, or such lesser amount as may be available, for the line item entitled nongame wildlife in section 1 of this Act, is from the nongame wildlife fund for the purpose of preservation, inventory, perpetuation, and conservation of nongame wildlife, natural areas, and nature preserves in this state for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 4. WATERBANK PROGRAM - DEPARTMENT OF AGRICULTURE. The amount of \$200,000, or such lesser amount as may be available, for the line item entitled waterbank program in section 1 of this Act, is from

the game and fish department operating fund and must be used to increase water storage and enhance wildlife habitat in North Dakota. Contracts and agreements relating to the waterbank program may be entered into by the director of the game and fish department, in cooperation with the agriculture commissioner.

SECTION 5. WILDLIFE SERVICES - DEPARTMENT OF AGRICULTURE.

The amount of \$400,000, or such lesser amount as may be available, for the line item entitled wildlife services in section 1 of this Act, is from the game and fish department operating fund and must be used to alleviate wildlife depredation and damage in North Dakota. Projects funded may include projects to alleviate waterfowl depredation and damage and must be approved by the director of the state game and fish department. Contracts and agreements relating to the wildlife services program may be entered into by the director of the state game and fish department, in cooperation with the agriculture commissioner.

SECTION 6. PRIVATE LAND HABITAT AND ACCESS IMPROVEMENT PROGRAM. The amount of \$400,000 or such lesser amount as may be available, from the line item entitled land habitat and deer depredation in section 1 of this Act, is from the additional revenue generated by hunting license fee increases contained in House Bill No. 1468. It is the intent of the fifty-seventh legislative assembly that these funds be spent to carry out the private land habitat and access improvement program by providing access to private land, establishing food plots, alleviating depredation, and enhancing habitat pursuant to subsection 19 of section 20.1-02-05, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 13, 2001
Filed April 16, 2001

CHAPTER 20

HOUSE BILL NO. 1020

(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, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$4,717,780
Operating expenses	1,129,334
Equipment	185,744
Capital improvements	1,159,200
Capital improvements - Fort Buford	3,543,160
Grants	485,559
Yellowstone-Missouri-Fort Union Commission	4,727
Lewis and Clark bicentennial	<u>1,523,844</u>
Total all funds	\$12,749,348
Less estimated income	<u>5,584,946</u>
Total general fund appropriation	\$7,164,402

SECTION 2. EMERGENCY. The line item entitled capital improvements - Fort Buford in section 1 of this Act is declared to be an emergency measure.

Approved May 4, 2001
Filed May 8, 2001

CHAPTER 21

HOUSE BILL NO. 1021

(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.

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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the parks and recreation department for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

PARKS AND RECREATION DEPARTMENT

Salaries and wages	\$4,876,341
Operating expenses	3,015,677
Equipment	325,750
Capital improvements	2,008,000
Grants	3,684,727
Lewis and Clark bicentennial	765,441
Total all funds	\$14,675,936
Less estimated income	7,397,000
Total general fund appropriation	\$7,278,936

Subdivision 2.

INTERNATIONAL PEACE GARDEN

International Peace Garden	\$377,083
Total general fund appropriation	\$377,083
Grand total general fund appropriation H.B. 1021	\$7,656,019
Grand total special funds appropriation H.B. 1021	\$7,397,000
Grand total all funds appropriation H.B. 1021	\$15,053,019

SECTION 2. FUNDING - INTERNATIONAL PEACE GARDEN AND THE INTERNATIONAL PEACE GARDEN FOUNDATION. The director of the parks and recreation department shall transfer from the amount appropriated in the International Peace Garden line item in subdivision 2 of section 1 of this Act a total of \$364,583 to the International Peace Garden and a total of \$12,500 to the International Peace Garden foundation, a United States corporation. The transfers to the International Peace Garden must be made in two amounts; \$182,292 transferred within ten days of July 1, 2001, and \$182,291 transferred within ten days of July 1, 2002. The transfer to the International Peace Garden foundation must be made only when the foundation has raised \$12,500 of other funds to be used to match the funds appropriated in subdivision 2 of section 1 of this Act. The parks and recreation department may not reduce the funds appropriated in the International Peace Garden line item in subdivision 2 of section 1 of this Act by a percentage greater

than any percentage allotment of general fund moneys required of the department pursuant to the provisions of sections 54-44.1-12 and 54-44.1-13.1.

SECTION 3. SNOWMOBILE FUND. The amount of \$600,000, 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 snowmobile fund for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 4. TRAIL TAX TRANSFER FUND. The amount of \$50,000, 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 trail tax transfer fund for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 5. STATE PARKS GIFT FUND. The amount of \$200,000, 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 state parks gift fund for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 13, 2001

Filed April 13, 2001

CHAPTER 22

HOUSE BILL NO. 1023

(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 for the sale of the land and building used by the state water commission as a maintenance shop and the purchase of new property for such use; to provide for a continuing appropriation; to provide statements of legislative intent; to create and enact a new subsection to section 61-02-14, a new section to chapter 61-02.1, and a new subsection to section 61-02.1-04 of the North Dakota Century Code, relating to funding of water development projects, repayment of bonds, and the powers and duties of the state water commission; to amend and reenact subsections 4 and 5 of section 61-01-26 and section 61-01-26.1 of the North Dakota Century Code, sections 10 and 11 of chapter 535 of the 1999 Session Laws, and section 2 of House Bill No. 1151, as approved by the fifty-seventh legislative assembly, relating to funds deposited in the water development trust fund, sharing costs for water quality protection programs, supplementing the water resources of eastern North Dakota, the statewide water development program, the expiration date for the issuance of bonds, and construction of a Devils Lake outlet; to transfer funds from the water development trust fund to the general fund; to provide requirements for the Fargo flood control project; and to provide a line of credit and an appropriation for repayment.

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 its various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$9,066,759
Operating expenses	7,503,485
Equipment	499,833
Capital improvements	28,710,864
Grants	22,475,067
Cooperative research	3,050,000
Statewide water development projects	<u>28,572,333</u>
Total all funds	\$99,878,341
Less estimated income	<u>90,144,521</u>
Total general fund appropriation	\$9,733,820

SECTION 2. STATEWIDE WATER DEVELOPMENT PROJECTS. The amount of \$200,000, or so much of the funds as may be necessary, included in the statewide water development projects line item in section 1 of this Act is for cost-sharing for projects authorized under section 319 of the Federal Water Pollution Control Act [Pub. L. 100-4; 100 Stat. 52; 33 U.S.C. 1329] for the control of nonpoint

sources of pollution for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 3. RESOURCES TRUST FUND. The amount of \$21,718,031, or so much of the funds 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 for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 4. WATER DEVELOPMENT TRUST FUND. The amount of \$37,631,684 or so much of the funds 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 for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 5. ALLOCATION OF GRANT FUNDS. The funds appropriated in the grants line item in section 1 of this Act must be disbursed by the state water commission in accordance with section 61-02-64.1.

SECTION 6. GRANTS - STATEWIDE WATER DEVELOPMENT PROJECTS. Section 54-44.1-11 does not apply to appropriations made for grants or for statewide water development projects in this Act. However, this exclusion is only in effect for two years after June 30, 2003. Any unexpended funds appropriated from the resources trust fund after that period has expired must be transferred to the resources trust fund and any unexpended funds appropriated from the water development trust fund after that period has expired must be transferred to the water development trust fund.

SECTION 7. RESOURCES TRUST FUND APPROPRIATION - ADJUSTMENT. If the resources trust fund 2001-03 revenues are in excess of \$21,718,031, 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, 2001, and ending June 30, 2003.

SECTION 8. 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 (774.60); 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 of land and the construction of a building and associated appurtenances to be used as a new maintenance facility. 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 the state water commission's 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 9. LEGISLATIVE INTENT. It is the intent of the fifty-seventh legislative assembly that the proceeds of the sale of the state water commission maintenance shop located in east Bismarck be used to purchase land and construct a new maintenance shop building. 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 land and constructing a new maintenance shop building.

It is further the intent of the fifty-seventh legislative assembly that if the proceeds from the sale are not available at the time the state water commission needs to purchase and construct the new building and associated appurtenances, 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 shall transfer to the funds from which money was taken an amount equal to any funds utilized for the

purchase of land and construction of the new maintenance building. 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.

It is further the intent of the fifty-seventh legislative assembly that 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.

SECTION 10. AMENDMENT. Subsections 4 and 5 of section 61-01-26 of the North Dakota Century Code are amended and reenacted as follows:

4. Accruing benefits from these resources can best be achieved for the people of the state through the development, execution, and periodic updating of comprehensive, coordinated, and well-balanced short-term and long-term plans and programs for the conservation and development of such resources by the departments and agencies of the state having responsibilities therefor. The plans and programs for the conservation and development of these resources may include implementation of a program to cost-share with local sponsors of water quality improvement projects.
5. Adequate implementation of such plans and programs shall be provided by the state through cost-sharing and cooperative participation with the appropriate federal and state departments and agencies and political subdivisions within the limitation of budgetary requirements and administrative capabilities, including consideration of cost-sharing for water quality improvement projects.

SECTION 11. AMENDMENT. Section 61-01-26.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-01-26.1. Findings and declaration of policy - Water to eastern North Dakota a critical priority - Water supplementation study - Employment of staff. The legislative assembly finds that many areas and localities in eastern North Dakota do not enjoy safe drinking water; ~~and that the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances.~~ It is also found that other areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term water supply. The legislative assembly further finds that supplementation of the water resources of eastern North Dakota ~~with water supplies~~ from other available sources, including the Missouri River, may be the only alternative to provide eastern North Dakota with a dependable source of safe, good quality water and an adequate quantity of water.

It is further declared that effective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of this state; and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate, and require the exercise of the sovereign powers of the state and concern a public purpose. Therefore, in order to accomplish this public purpose, it is declared necessary that a means to supply and distribute water to the people of eastern North Dakota for all beneficial purposes including domestic, rural water, municipal, livestock, light industrial, mining, agriculture, and other uses must be developed. In furtherance of

this public purpose, the supply and delivery of water to eastern North Dakota is established as a critical priority and the state water commission shall ~~continue to cooperate~~, in cooperation with the Garrison diversion conservancy district in addressing and the communities and rural water systems in eastern North Dakota, address this critical priority by developing a plan and estimate of the costs for supplementing the water resources of eastern North Dakota with water supplies from other available resources, including the Missouri River.

The state water commission may employ full-time personnel and may employ such other personnel as are necessary for the administration of this section as appropriated funds permit. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund or appropriated for purposes of administering this section may be used for salaries and expenses of persons employed pursuant to this section.

¹² **SECTION 12. AMENDMENT.** Section 2 of House Bill No. 1151, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

SECTION 2. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

Devils Lake outlet - Eminent domain - Design and build construction. In the construction of an outlet from Devils Lake, the commission:

1. Shall make a reasonable and diligent effort to acquire the property interests needed by negotiation. The commission is deemed to have made a reasonable and diligent effort if it has contacted or attempted to contact the owner of the property interest needed at least three times over a thirty-day period. If the commission is unable to acquire the interest needed by negotiation, then it may take possession of the interests needed after making a written offer to purchase and depositing the amount of the offer with the clerk of the district court of the county in which the property interest is located. The amount of the offer must be at least the average value per acre of comparable property. The clerk shall immediately notify the property owner in writing of the deposit. Within thirty days after receiving notice, the property owner may appeal to district court by serving notice of appeal upon the commission and the matter must be tried in the manner prescribed under chapter 32-15.
2. May issue, when it determines that it would be advantageous to the state or that it is necessary in order to construct the outlet in a timely manner, a request for proposals to design and build the outlet. The request for proposals must require that each proposal submitted contain a single price that includes the cost to design and build the outlet. Neither chapter 48-01.1 or 54-44.7, nor any other law requiring competitive bidding applies to the construction of the outlet if the commission determines to use the design and build procedure. The commission shall select the proposal that it determines is the most advantageous to the state.

¹² Section 61-02-23.2 was created by section 2 of House Bill No. 1151, chapter 562.

SECTION 13. A new subsection to section 61-02-14 of the North Dakota Century Code is created and enacted as follows:

To consider cost-sharing for water quality improvement projects.

SECTION 14. A new section to chapter 61-02.1 of the North Dakota Century Code is created and enacted as follows:

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 61-02. 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 15. A new subsection to section 61-02.1-04 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Principal and interest on bonds issued for projects authorized pursuant to section 14 of this Act are payable from transfers to be made and appropriated by the legislative assembly from the water development trust fund as provided in section 61-02.1-05, then from transfers to be made and appropriated by the legislative assembly from revenues in the resources trust fund other than revenues from state taxes, then from appropriations of other available revenues in the then current biennium, and then from any other revenues the state water commission makes available during the then current biennium for that purpose. If sufficient funds from these sources are not available, then from transfers to be made and appropriated by the legislative assembly from the first available current biennial earnings of the Bank of North Dakota not to

exceed six million five hundred thousand dollars per biennium prorated with any other bonds payable from transfers to be made and appropriated by the legislative assembly from the available current biennial earnings of the Bank of North Dakota, to be credited by the trustee to the fund established for paying principal and interest on the bonds under a trust indenture.

SECTION 16. LEGISLATIVE INTENT - STATEWIDE WATER PROJECT FUNDING LIMIT. Notwithstanding the amounts of \$28,572,333 included in the statewide water development projects line item in section 1 of this Act and \$20,000,000 included in section 14 of this Act, and the amount appropriated in chapter 61-02.1, it is the intent of the fifty-seventh legislative assembly that no more than a total of sixty-seven million eight hundred thousand dollars, plus, if bonds are issued, the costs of issuance of the bonds, capitalized interest, and reasonably required reserves, may be expended for statewide water development projects for the 2001-03 biennium. Contracts for water projects to be paid from the water development trust fund may initially be issued up to an amount equal to seventy-five percent of the amount appropriated from that fund for projects. Contracts for the remaining twenty-five percent appropriated may only be issued to the extent uncommitted funds are available in the water development trust fund.

SECTION 17. LINE OF CREDIT - APPROPRIATION. The Bank of North Dakota shall extend a line of credit not to exceed \$25,000,000, which is appropriated for the biennium beginning July 1, 2001, and ending June 30, 2003, to the state water commission for the purpose of interim financing until bonds are issued under chapter 61-02.1.

SECTION 18. APPROPRIATION. 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 extended to the state water commission under section 17 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 19. TRANSFER. Notwithstanding section 54-27-25, during the biennium beginning July 1, 2001, and ending June 30, 2003, the director of the office of management and budget may transfer \$9,733,820 from the water development trust fund to the general fund.

SECTION 20. Section 10 of chapter 535 of the 1999 Session Laws is amended and reenacted as follows:

SECTION 10. STATEWIDE WATER DEVELOPMENT PROGRAM - LEGISLATIVE INTENT. The state water commission shall develop a new comprehensive statewide water development program with priorities based upon expected funds available from the water development trust fund for water development projects. This program may include water quality improvement projects. It is the intent of the legislative assembly that the state water commission consider the delivery of water for usable purposes a priority for water development projects after the projects authorized in section 3 of this Act are completed.

SECTION 21. AMENDMENT. Section 11 of chapter 535 of the 1999 Session Laws is amended and reenacted as follows:

SECTION 11. EXPIRATION DATE. The authority of the commission to issue bonds as provided in chapter 61-02.1 is effective through June 30, ~~2004~~ 2003, and

after that date is ineffective provided, however, that 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.

SECTION 22. LEGISLATIVE INTENT - ADMINISTRATIVE EXPENSES. It is the intent of the fifty-seventh legislative assembly that the water development trust fund not be used as a source of funding for state water commission administrative expenses after the 2001-03 biennium.

SECTION 23. FARGO FLOOD CONTROL - REQUIREMENTS. Except for planning, the state water commission may not issue bonds or provide funding for Fargo flood control projects until applicable permits are issued, southeast Cass water resource district has approved the project, and a public hearing process is held on the approved project plan. The total authorization consists of \$500,000 for expenses for preliminary study and planning of the project and \$5,000,000 for project construction expenses.

Approved April 20, 2001
Filed April 20, 2001

CHAPTER 23

HOUSE BILL NO. 1024

(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; to authorize and provide an appropriation for additional full-time equivalent positions for the workers compensation bureau; to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to the creation of a building maintenance account; and to amend and reenact sections 65-02-03.2 and 65-05.1-06.2 of the North Dakota Century Code, relating to workers compensation board members and workers' compensation vocational rehabilitation services.

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, 2001, and ending June 30, 2003, as follows:

Total special funds appropriation	\$31,141,340
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SECTION 2. NORTH DAKOTA WORKERS COMPENSATION BUREAU FULL-TIME EQUIVALENT EMPLOYEE POSITIONS AUTHORIZATION - APPROPRIATION - REPORT TO BUDGET SECTION. The North Dakota workers compensation board of directors may authorize the workers compensation bureau to hire, upon a determination that employees are needed to facilitate the economic and efficient administration of the bureau, up to ten full-time equivalent employee positions in addition to the full-time equivalent employee positions authorized in section 1 of this Act for the biennium beginning July 1, 2001, and ending June 30, 2003. There is appropriated out of any moneys in the workers' compensation fund, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the workers compensation bureau for the purpose of providing wages, salaries, and benefits for any additional full-time equivalent positions authorized under this section. The workers compensation board of directors shall report to the budget section of the legislative council on any additional full-time equivalent employee positions and related funding authorized.

SECTION 3. PROJECT AUTHORIZATION. The industrial commission, acting as the North Dakota building authority, may, at the request of the workers compensation board of directors, arrange for funding of an office building project authorized by this section, 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, 2001, and ending June 30, 2003. The proceeds of the evidences of indebtedness and other available funds are appropriated during the period beginning July 1, 2001, and ending July 31, 2003, for a workers compensation bureau office building.

The industrial commission may issue evidences of indebtedness in the principal amount requested plus costs of issuance, capitalized interest, and any reasonable required reserves under this section with the condition that lease rental payments need not begin until July 1, 2003. This authority of the industrial commission to issue evidences of indebtedness ends June 30, 2003, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and to comply with any covenants entered into before that date.

SECTION 4. BOND ISSUANCE REPAYMENT RESPONSIBILITY. Funding must be made available by the workers compensation bureau from non-general fund sources to be appropriated to the industrial commission to retire the evidences of indebtedness issued for the project costs associated with the construction of the project authorized by this Act.

SECTION 5. LEGISLATIVE INTENT - WORKERS COMPENSATION BUREAU BUILDING - OTHER STATE AGENCIES LEASING. It is the intent of the legislative assembly that if a new facility is built to house the operations of the workers compensation bureau that the facility be built to include rental space for other state agencies and that the workers compensation bureau work with the office of management and budget to identify which agencies will lease space in the workers compensation bureau building and report to the budget section of the legislative council on plans for leasing to other agencies. The bureau shall set and collect rental amounts and maintain and control the building and its grounds.

SECTION 6. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Building maintenance account - Continuing appropriation. There is a building maintenance account within the workers' compensation fund, to which the workers compensation bureau shall deposit all building rental proceeds if the workers compensation bureau builds a building that includes rental space for other state entities. The moneys in the account are appropriated on a continuing basis to the workers compensation bureau to pay bond principal and interest payments, operating, maintenance, repair, and payments in lieu of taxes expenses of the building and grounds. This account may be used only for the purposes identified in this section. The workers compensation bureau may either hire or contract for building maintenance and repair services anticipated by this section. The bureau shall report to the budget section of the legislative council on a biennial basis on all revenues deposited into this account and expenditures made from the account.

SECTION 7. AMENDMENT. Section 65-02-03.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-03.2. Compensation of board members. A board member is entitled to receive compensation ~~in the amount of sixty-two dollars and fifty cents per day as determined by the board~~ for days spent in attendance at board meetings or other business as approved by the board. A board member is entitled to reimbursement for mileage and expenses as provided for state officers.

SECTION 8. AMENDMENT. Section 65-05.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.2. Bids Contract for vocational rehabilitation services. The bureau ~~shall solicit bids from~~ may contract with vocational rehabilitation vendors to provide vocational rehabilitation services ~~relative to vocational rehabilitation of claimants.~~ ~~The bureau shall contract with the lowest and best bidders to provide these services on a biennial basis.~~ The bureau shall determine the criteria that render a vocational rehabilitation vendor qualified. ~~The request for bids must contain a detailed outline of services each vendor will be expected to provide. The accepted bid is binding upon both the bureau and the rehabilitation vendor.~~ If additional services are determined to be necessary as a result of failed or inappropriate rehabilitation of an injured employee through no fault of the employee, the bureau may contract with the vendor for additional services. If the failure or inappropriateness of the rehabilitation of the injured employee is due to the vendor's failure to provide the necessary services to fulfill the contract, the bureau is not obligated to use that vendor for additional services on that claim and the bureau may refuse payment for a service that the vendor failed to perform which was a material requirement of the contract.

Approved April 24, 2001

Filed April 24, 2001

CHAPTER 24**HOUSE BILL NO. 1025**
(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 hereby appropriated out of any moneys from special funds derived from income, to the retirement and investment agencies listed in this section for the purpose of defraying their expenses, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

RETIREMENT AND INVESTMENT OFFICE

Salaries and wages	\$1,664,041
Operating expenses	1,021,492
Equipment	22,600
Contingency	<u>82,000</u>
Total special funds appropriation	\$2,790,133

Subdivision 2.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Salaries and wages	\$2,314,750
Operating expenses	1,507,730
Equipment	12,000
Contingency	<u>25,000</u>
Total special funds appropriation	\$3,859,480
Grand total special funds appropriation H.B. 1025	\$6,649,613

Approved April 24, 2001

Filed April 24, 2001

CHAPTER 25

HOUSE BILL NO. 1026

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

STATE DEPARTMENTS AND INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of various state departments and institutions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income, the sums as hereinafter provided or so much of the sums as may be necessary. These sums increase the appropriation authority enacted by the fifty-sixth legislative assembly to the stated departments and institutions of the state of North Dakota for the purpose of defraying their expenses, for the period beginning January 1, 2001, and ending June 30, 2001, as follows:

Subdivision 1.

OFFICE OF ADMINISTRATIVE HEARINGS

Operating expenses	<u>\$120,000</u>
Total general fund appropriation	<u>\$120,000</u>

Subdivision 2.

HIGHWAY PATROL

Administration	\$7,000
Field operations	<u>193,000</u>
Total general fund appropriation	<u>\$200,000</u>

Subdivision 3.

DIVISION OF EMERGENCY MANAGEMENT

Operating expenses	<u>\$14,000,000</u>
Total general fund appropriation	<u>\$14,000,000</u>

Subdivision 4.

DEPARTMENT OF PARKS AND RECREATION

Natural resources	<u>\$132,000</u>
Total general fund appropriation	<u>\$132,000</u>

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA

1997 flood expenditures	<u>\$3,115,908</u>
Total general fund appropriation	<u>\$3,115,908</u>

Subdivision 6.

NORTH DAKOTA STATE UNIVERSITY	
2000 flood expenditures	<u>\$1,609,200</u>
Total general fund appropriation	<u>\$1,609,200</u>

Subdivision 7.

ATTORNEY GENERAL	
Operating expenses	\$40,000
Arrest and return of fugitives	<u>7,000</u>
Total general fund appropriation	<u>\$47,000</u>

Subdivision 8.

MAYVILLE STATE UNIVERSITY	
Operating expenses	\$14,630
Capital improvements	<u>25,000</u>
Total general fund appropriation	<u>\$39,630</u>

Subdivision 9.

STATE COLLEGE OF SCIENCE	
Operating expenses	\$279,945
Capital improvements	<u>32,745</u>
Total general fund appropriation	<u>\$312,690</u>

Subdivision 10.

STATE TREASURER	
In lieu of tax payments	<u>\$783,413</u>
Total general fund appropriation	<u>\$783,413</u>

Subdivision 11.

DEPARTMENT OF CORRECTIONS AND REHABILITATION	
Victims services	<u>\$250,000</u>
Total special funds appropriation	<u>\$250,000</u>
Grand total general fund appropriation H.B. 1026	\$20,359,841
Grand total special funds appropriation H.B. 1026	<u>\$250,000</u>
Grand total all funds appropriation H.B. 1026	<u>\$20,609,841</u>

SECTION 2. EXEMPTION. The appropriation contained in subdivision 3 of section 1 of this Act is not subject to the provisions of section 54-44.1-11 and any unexpended funds from this appropriation are available during the biennium beginning July 1, 2001, and ending June 30, 2003, for the purpose of providing state matching funds for public assistance and disaster hazard mitigation.

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

Approved April 13, 2001
Filed April 16, 2001

CHAPTER 26

SENATE BILL NO. 2001

(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 government; to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to legislative compensation; 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 the 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, 2003, as follows:

Subdivision 1.

FIFTY-SEVENTH AND FIFTY-EIGHTH LEGISLATIVE
ASSEMBLIES AND BIENNIUM

Salaries and wages	\$5,566,499
Operating expenses	2,987,567
Equipment	350,800
National conference of state legislatures	<u>165,297</u>
Total general fund appropriation	\$9,070,163

Subdivision 2.

LEGISLATIVE COUNCIL

Salaries and wages	\$4,594,446
Operating expenses	2,190,656
Equipment	148,300
Information technology program	<u>240,000</u>
Total general fund appropriation	\$7,173,402
Grand total general fund appropriation	\$16,243,565

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-seventh and fifty-eighth 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.

¹³ **SECTION 3. AMENDMENT.** Section 54-03-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of one hundred eleven dollars for each calendar day during any organizational, special, or regular legislative session. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of six hundred fifty dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees with the additional limitation that reimbursement for travel by common carrier may be only at the cost of coach fare and may not exceed one and one-half times the amount the member would be entitled to receive as mileage reimbursement for travel by motor vehicle. A member of the legislative assembly who does not receive reimbursement for lodging and whose place of residence in the legislative district that the member represents is not within the city of Bismarck is entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between the residence and the place of meeting of the legislative assembly when it is in session and may receive reimbursement for lodging at the place of meeting of the legislative assembly as provided in section 44-08-04 for each calendar day for which round trip travel reimbursement is not claimed, provided that the total reimbursement may not exceed six hundred fifty dollars per month. The amount to which each legislator is entitled must be paid following the organizational session in December and following each month during a regular or special session.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session must be included as a calendar day during a legislative session for the purposes of this section.

In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of two hundred fifty dollars a month, which is payable every six months or monthly, at the member's option. If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member. The majority and minority leaders of the house and senate and the chairman of the legislative council, if the chairman is not a majority or minority leader, are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred fifty dollars per month during the biennium for their execution of public duties.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances must be excluded from

¹³ Section 54-03-20 was also amended by section 1 of Senate Bill No. 2048, chapter 467, and section 1 of Senate Bill No. 2175, chapter 468.

gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)].

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

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 27

SENATE BILL NO. 2002 (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; to amend and reenact sections 27-02-02 and 27-05-03 of the North Dakota Century Code, relating to salaries of supreme and district court judges; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide a statement of legislative intent; 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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the judicial branch for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

SUPREME COURT

Salaries and wages	\$5,657,954
Operating expenses	1,583,678
Equipment	153,250
Judges retirement	<u>209,069</u>
Total general fund appropriation	\$7,603,951

Subdivision 2.

DISTRICT COURTS

Salaries and wages	\$25,056,564
Operating expenses	10,004,669
Equipment	875,150
Judges retirement	878,381
UND - Central legal research	80,000
Alternative dispute resolution	<u>40,000</u>
Total all funds	\$36,934,764
Less estimated income	<u>1,194,071</u>
Total general fund appropriation	\$35,740,693

Subdivision 3.

JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD

Judicial conduct commission and disciplinary board	<u>\$528,262</u>
Total all funds	\$528,262
Less estimated income	<u>273,750</u>
Total general fund appropriation	\$254,512

Subdivision 4.

CLERK OF DISTRICT COURT FUNDING

Salaries and wages	\$7,132,966
Operating expenses	3,338,737
Equipment	382,650
Collection of restitution	50,000
Total all funds	\$10,904,353
Less estimated income	750,000
Total general fund appropriation	\$10,154,353
Grand total general fund appropriation	\$53,753,509
Grand total special funds appropriation	\$2,217,821
Grand total all funds appropriation	\$55,971,330

SECTION 2. APPROPRIATION. There are hereby 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, 2001, and ending June 30, 2003.

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.

SECTION 4. EXEMPTION. The district courts' appropriation contained in subdivision 2 of section 1 of chapter 2 of the 1999 Session Laws is not subject to the provisions of section 54-44.1-11 for up to an amount of \$350,000 and any unexpended funds from this appropriation are available to be used to consolidate and integrate the east central judicial district's case management system with the unified court information system used by the other six judicial districts during the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 5. JUDICIAL BRANCH - RECORDS MANAGEMENT. The judicial branch is encouraged to explore the opportunities of using the electronic document management system services provided by the information technology department for enhanced records management and data storage.

SECTION 6. LEGISLATIVE INTENT - RESTITUTION COLLECTION AND ENFORCEMENT. It is the intent of the legislative assembly that the county and state offices performing restitution collection and enforcement activities as of April 1, 2001, continue to perform those activities until June 30, 2003.

SECTION 7. LEGISLATIVE COUNCIL STUDY - CLERK OF COURT. The legislative council shall consider studying, during the 2001-02 interim, the implementation of the clerk of court unification including a review of the delivery of services by clerks of court and the responsibility for restitution collection and enforcement activities.

SECTION 8. AMENDMENT. Section 27-02-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-02-02. Salaries of judges of supreme court. The annual salary of each judge of the supreme court is ~~eighty-three~~ ninety-two thousand ~~eight~~ two hundred

~~seven~~ eighty-nine dollars through June 30, ~~2000~~ 2002, and ~~eighty-five~~ ninety-nine thousand ~~four~~ one hundred ~~eighty-three~~ twenty-two dollars thereafter. The chief justice of the supreme court is entitled to receive an additional two thousand ~~three~~ five hundred ~~sixty-five~~ sixty-nine dollars per annum through June 30, ~~2000~~ 2002, and two thousand ~~four~~ eight hundred ~~twelve~~ ninety-nine dollars per annum thereafter.

SECTION 9. AMENDMENT. Section 27-05-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-05-03. Salaries and expenses of district judges. The annual salary of each district judge is ~~seventy-seven~~ eighty-four thousand ~~three~~ seven hundred ~~forty~~ sixty-five dollars through June 30, ~~2000~~ 2002, and ~~seventy-eight~~ ninety thousand ~~eight~~ six hundred ~~eighty-seven~~ seventy-one dollars thereafter. Each district judge is entitled to travel expenses including mileage and subsistence while engaged in the discharge of official duties outside the city in which the judge's chambers are located. The salary and expenses are payable monthly in the manner provided by law. A presiding judge of a judicial district is entitled to receive an additional one thousand ~~eight~~ nine hundred ~~thirty-one~~ eighty-nine dollars per annum, through June 30, ~~2000~~ 2002, and ~~one~~ two thousand ~~eight~~ six hundred ~~sixty-eight~~ seventy-two dollars thereafter.

Approved April 28, 2001

Filed April 28, 2001

CHAPTER 28

SENATE BILL NO. 2003

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

UNIVERSITY SYSTEM

AN ACT to provide an appropriation for defraying the expenses of the North Dakota university system; to provide for legislative council studies; to provide statements of legislative intent; to authorize the University of North Dakota to purchase certain land in Grand Forks County; to amend and reenact sections 15-10-12, 54-44.1-04, subsection 7 of section 54-44.1-06, and section 54-44.1-11 of the North Dakota Century Code, relating to higher education institutions' special revenue funds, budget requests and block grant appropriations, and unexpended appropriations; to repeal section 2 of House Bill No. 1283, section 2 of House Bill No. 1444, and section 22 of chapter 37 of the 1999 Session Laws, relating to a technology occupations student loan program, a student loan forgiveness program, and the university of North Dakota winter sports facility maintenance fund; 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 other income, to the North Dakota university system and to the various institutions of higher learning under the supervision of the board of higher education for the purpose of defraying their expenses, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

Operations	\$3,563,887
Student financial assistance grants	4,223,031
Information technology management	216,676
Professional student exchange program	1,560,716
Disabled student services	51,560
Technical administration	194,788
Contingency and capital improvement emergency fund	344,309
Scholars program	770,730
Native American scholarships	204,082
Title II	534,000
Competitive research program	4,000,000
Board initiatives	1,370,797
Capital bond payments	12,730,841
Education incentive programs	<u>830,000</u>
Total all funds	\$30,595,417
Less estimated income	<u>3,716,822</u>
General fund appropriation	\$26,878,595

Subdivision 2.

NORTH DAKOTA UNIVERSITY SYSTEM

Equity and special needs pool	\$4,628,824
Technology pool	<u>26,938,419</u>
General fund appropriation	\$31,567,243

Subdivision 3.

BISMARCK STATE COLLEGE

Operations	\$15,381,193
Capital assets	<u>846,000</u>
General fund appropriation	\$16,227,193

Subdivision 4.

LAKE REGION STATE COLLEGE

Operations	\$4,881,954
Capital assets	<u>399,831</u>
Total all funds	\$5,281,785
Less estimated income	<u>325,000</u>
General fund appropriation	\$4,956,785

Subdivision 5.

WILLISTON STATE COLLEGE

Operations	\$5,390,441
Capital assets	<u>88,790</u>
General fund appropriation	\$5,479,231

Subdivision 6.

UNIVERSITY OF NORTH DAKOTA

Operations	\$85,601,876
Capital assets	<u>13,572,136</u>
Total all funds	\$99,174,012
Less estimated income	<u>11,210,000</u>
General fund appropriation	\$87,964,012

Subdivision 7.

NORTH DAKOTA STATE UNIVERSITY

Operations	\$66,931,216
Capital assets	<u>22,937,531</u>
Total all funds	\$89,868,747
Less estimated income	<u>21,200,000</u>
General fund appropriation	\$68,668,747

Subdivision 8.

NORTH DAKOTA STATE COLLEGE OF SCIENCE

Operations	\$24,099,302
Capital assets	<u>3,800,220</u>
Total all funds	\$27,899,522
Less estimated income	<u>916,720</u>
General fund appropriation	\$26,982,802

Subdivision 9.

DICKINSON STATE UNIVERSITY

Operations	\$13,746,171
Capital assets	<u>4,393,962</u>
Total all funds	\$18,140,133

Less estimated income	<u>4,000,000</u>
General fund appropriation	\$14,140,133

Subdivision 10.

MAYVILLE STATE UNIVERSITY

Operations	\$8,330,748
Capital assets	<u>4,724,589</u>
Total all funds	\$13,055,337
Less estimated income	<u>4,000,000</u>
General fund appropriation	\$9,055,337

Subdivision 11.

MINOT STATE UNIVERSITY

Operations	\$25,919,536
Capital assets	<u>612,850</u>
General fund appropriation	\$26,532,386

Subdivision 12.

VALLEY CITY STATE UNIVERSITY

Operations	\$11,325,513
Capital assets	<u>1,115,334</u>
General fund appropriation	\$12,440,847

Subdivision 13.

MINOT STATE UNIVERSITY - BOTTINEAU

Operations	\$4,097,577
Capital assets	<u>187,663</u>
General fund appropriation	\$4,285,240

Subdivision 14.

NORTH DAKOTA FOREST SERVICE

Salaries and wages	\$1,909,839
Operating expenses	442,998
Equipment	48,011
Capital improvements	171,061
Grants to centennial trees	<u>247,486</u>
Total all funds	\$2,819,395
Less estimated income	<u>1,050,526</u>
General fund appropriation	\$1,768,869

Subdivision 15.

UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH
SCIENCES

Operations	\$30,006,416
General fund appropriation	\$30,006,416
Grand total general fund appropriation S.B. 2003	\$366,953,836
Grand total estimated income S.B. 2003	\$46,560,068
Grand total all funds appropriation S.B. 2003	\$413,513,904

SECTION 2. APPROPRIATION TRANSFER. The contingency and capital improvement emergency fund, board initiatives, and disabled student services line items in subdivision 1 of section 1 of this Act must be used for the benefit of the institutions and entities in section 1 of this Act as determined by the board of higher education. The university system office shall notify the office of management and budget of the allocation to the various entities and institutions and which line items in the various institutions and entities must be adjusted.

SECTION 3. FEDERAL, PRIVATE, AND OTHER FUNDS - APPROPRIATION. All funds, in addition to those appropriated in section 1 of this Act, received by the entities under the control of the state board of higher education pursuant to federal acts, private grants, and other sources are appropriated.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$16,441, or so much of the sum as may be necessary, to Mayville state university for the purpose of defraying repair costs for the university's fieldhouse floor, for the period beginning with the effective date of this Act and ending June 30, 2003.

SECTION 5. 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 university of North Dakota for the purpose of defraying flood-related expenses, for the period beginning with the effective date of this Act and ending June 30, 2003, as follows:

1997 flood expenditures	<u>\$269,676</u>
Total general fund appropriation	<u>\$269,676</u>

SECTION 6. AUTHORIZATION. Notwithstanding section 3 of chapter 3 of the 1999 Session Laws, Lake Region state college is authorized to expend \$130,000 in excess tuition collections in the biennium beginning July 1, 1999, and ending June 30, 2003.

SECTION 7. TRANSFER AUTHORITY. The state board of higher education may approve transfer of funds between line items for each entity included in section 1 of this Act and shall notify the office of management and budget of each transfer; however, funds may not be transferred out of the capital assets appropriations.

SECTION 8. EXEMPTION. The appropriations contained in section 1 of chapter 3 of the 1999 Session Laws are not subject to the provisions of section 54-44.1-11. Capital improvement appropriations contained in section 1 of chapter 3 of the 1999 Session Laws may be expended as directed by the university system for capital repairs and improvements.

SECTION 9. LEGISLATIVE INTENT - FULL-TIME EQUIVALENTS. 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 in subdivisions 3 through 15 of section 1 of this Act. The university system shall report any adjustments to the office of management and budget prior to the submission of the 2003-05 biennium budget request. The number of full-time equivalent positions for the university system office may not be increased above the level employed as of April 28, 2001.

SECTION 10. 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 percent to students at private institutions with the remaining funds allocated to students at public and Native American institutions.

SECTION 11. EDUCATION INCENTIVE PROGRAMS. Of the funds appropriated for education incentives in section 1 of this Act, \$60,000 is to provide incentives to encourage additional doctoral graduates in North Dakota, \$370,000 is provided for teacher retraining scholarships and a teacher student loan forgiveness

program, and \$400,000 is provided for a technology occupations student loan program authorized in House Bill No. 1283.

SECTION 12. TECHNOLOGY POOL. The technology pool amount in subdivision 2 of section 1 must be used for the benefit of the institutions and entities in section 1 as determined by the state board of higher education. Technology funding allocations are to be made based on historic funding, the North Dakota university system information technology plan, the statewide network plan, base funding for higher education computer network computer center operations, and base funding for interactive video network and on-line dakota information network operations.

SECTION 13. EQUITY AND SPECIAL NEEDS POOL. The equity and special needs pool in subdivision 2 of section 1 must be used for the benefit of the institutions and entities in subdivisions 3 through 15 of section 1 as determined by the state board of higher education. When making allocations from the equity and special needs pool, the state board of higher education shall allocate the funds to address equity and parity funding needs and to support new initiatives or program costs consistent with board and statewide needs.

SECTION 14. STATE FORESTER RESERVE ACCOUNT APPROPRIATION - BUDGET SECTION APPROVAL. The estimated income in subdivision 14 of section 1 of this Act includes the sum of \$120,000 from the state forester reserve account, established in section 4-19-01.2, for the construction of the Towner nursery tree storage building.

After receiving approval from the budget section, the forest service may obtain and utilize any available funds, in addition to the \$120,000 from the reserve account, received from federal, public, private, or other sources, which are appropriated to the state forest service to assist in the construction of the Towner nursery tree storage building.

SECTION 15. LEGISLATIVE INTENT - ENROLLMENT MANAGEMENT PLAN. It is the intent of the legislative assembly that the state board of higher education establish a long-term enrollment management plan and procedures for implementation of the plan. The board shall report to the legislative council during the 2001-02 interim on the board's progress toward establishing a long-term enrollment management plan and related implementation procedures and provide the final report to the fifty-eighth legislative assembly.

SECTION 16. LEGISLATIVE INTENT - ALTERNATIVE HEATING SOURCES. It is the intent of the legislative assembly that institutions under the control of the state board of higher education explore the possible use of alternative heating sources, including the use of North Dakota coal.

SECTION 17. LEGISLATIVE COUNCIL STUDY - COLLEGE TECHNICAL EDUCATION COUNCIL. The legislative council shall consider studying during the 2001-02 interim the responsibilities and the functions of the college technical education council and the implementation of the workforce training regions including how the regions are functioning. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 18. LEGISLATIVE COUNCIL STUDY - HIGHER EDUCATION ACCOUNTABILITY MEASURES. The legislative council shall consider studying during the 2001-02 interim the board of higher education's implementation of the

performance and accountability measures report required by Senate Bill No. 2041. If conducted, the study may include the use of the higher education roundtable format. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 19. 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 Senate Bill No. 2041 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. Ratio measuring the size of the university system's outstanding maintenance as compared to its expendable net assets.
 - e. 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. Report on 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 20. LEGISLATIVE INTENT - STATE COLLEGE OF SCIENCE - BLIKRE ACTIVITIES CENTER RENOVATION. It is the intent of the legislative assembly that the funding of \$368,920 included in the estimated income in subdivision 8 of section 1 of this Act for an addition to the Blikre activities center at the state college of science must be collected before construction of an addition may begin. The state college of science, after receiving approval from the budget section, may obtain and utilize any available funds, in addition to the \$368,920, received from federal, public, private, or other sources which are appropriated to the state college of science to assist in the Blikre activities center addition.

SECTION 21. LEGISLATIVE INTENT - BISMARCK STATE COLLEGE - SCHAFFER HALL RENOVATION. It is the intent of the legislative assembly that funding of \$596,000 included in the capital assets line item in subdivision 3 of section 1 of this Act for renovation of Schaffer hall be used only for renovation of classroom or student-related areas. No funds from any source may be used for renovation of administrative offices in Schaffer hall.

SECTION 22. PURCHASE OF LAND AUTHORIZED.

1. The university of North Dakota may purchase the land described in this subsection for the price and on the terms as determined by the university of North Dakota. The land to be purchased is that portion of the burlington northern and santa fe railway company's (formerly great northern railway company) yard property at Grand Forks, North Dakota, situated in the S 1/2 SE 1/4 SE 1/4 of section 5, township 151 north, range 50 west of the fifth principal meridian, Grand Forks County, North Dakota, being a portion of the same 5 1/2 acre tract of land described in warranty deed from Thomas Campbell, et ux, to the Saint Paul, Minneapolis and Manitoba railway company filed for record July 29, 1880 in book c of deed, page 85 in and for said county, described as follows, to-wit:

Beginning at a point on the north line of said 5 1/2 acre tract of land distant 33.0 feet west of the east line of said section 5, said point being 75.0 feet north, as measured at right angles from said railway company's main track centerline, as originally located and constructed, and 85 feet, more or less, north of the south line of said section 5; thence west along said north line, and parallel with said main track centerline, a distance of 848.5 feet; thence south at right angles to the last described course 46.5 feet; thence east parallel with the north line of said 5 1/2 acre tract to the intersection with a line drawn parallel with and distant 33.0 feet west, as measured at right angles from the east line of said section 5, thence north along the last described parallel line to the point of beginning,

EXCEPTING THEREFROM, that portion, if any, lying within 10.0 feet of said railway company's most northerly spur track centerline, as now located and constructed upon, over and across said S 1/2 SE 1/4 SE 1/4.

ALSO,

That portion of the burlington northern and santa fe railway company's (formerly great northern railway company) yard property at Grand Forks, North Dakota, situated in the S 1/2 SW 1/4 SE 1/4 of section 5, township 151 north, range 50 west of the fifth principal meridian, Grand Forks County, North Dakota, being a portion of the same 5 1/2 acre tract of land described in warranty deed from Thomas Campbell, et ux, to the Saint Paul, Minneapolis and Manitoba railway company filed for record July 29, 1880 in book c of deed, page 85 in and for said county, described as follows, to-wit:

Beginning at a point on the north line of said 5 1/2 acre tract of land distant 290.0 feet east of the west line of said S 1/2 SW 1/4 SE 1/4, said point being 75.0 feet north, as measured at right angles from said railway company's main track centerline, as originally located and constructed, and 85 feet, more or less, north of the south line of said section 5; thence east along said north line, and parallel with said main track centerline, a distance of 990 feet, more or less, to the intersection with a line drawn concentric with and distant 15.0 feet northwesterly, as measured radially from said railway company's university power house spur track centerline, as now located and constructed; thence southwesterly along said concentric line to the intersection with a line

drawn parallel with and distant 50.0 feet south, as measured at right angles from said north line; thence west along said parallel line to the intersection with a line drawn parallel with and distant 290.0 feet east, as measured at right angles from the west line of said S 1/2 SW 1/4 SE 1/4; thence north along the last described parallel line 50.0 feet to the point of beginning.

2. The attorney general shall review and approve as to form and legality all legal documents, papers, and instruments required for the purchase authorized by this section.

SECTION 23. APPROPRIATION. There is appropriated out of any moneys received by the university of North Dakota pursuant to federal acts, private grants, and other sources enumerated in section 3 of this Act, not otherwise appropriated, the sum of \$141,000, or so much of the sum as may be necessary, to the university of North Dakota for the purpose of purchasing the land described in section 22 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 24. AMENDMENT. Section 15-10-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-12. Board may accept gifts and bequests - Deposit and appropriation of institutional funds. The Subject to the limitations of section 15-10-12.1, 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, 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, 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. 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.

SECTION 25. AMENDMENT. Section 54-44.1-04 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-04. 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 his 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 ~~his~~ the director's discretion may extend the filing date for any budget unit if ~~he~~ the director finds there is some circumstance which 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 budget unit's estimate of financial requirements except such estimate may not exceed ninety percent of such budget unit's previous biennial appropriation. The director of the budget or such subordinate officer as ~~he~~ shall designate 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.

SECTION 26. AMENDMENT. Subsection 7 of section 54-44.1-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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. 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.

SECTION 27. AMENDMENT. Section 54-44.1-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-11. Office of management and budget to cancel unexpended appropriations - When they may continue. ~~The~~ 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 chairman 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 where the total purchase price is within the authorized appropriation.

SECTION 28. REPEAL. Section 2 of House Bill No. 1283 and section 2 of House Bill No. 1444, as approved by the fifty-seventh legislative assembly, and section 22 of chapter 37 of the 1999 Session Laws are repealed.

SECTION 29. EXPIRATION DATE. Sections 24, 25, 26, and 27 of this Act are effective through June 30, 2003, and after that date are ineffective.

SECTION 30. EMERGENCY. The capital assets line items contained in section 1 of this Act and sections 4, 5, 6, and 9 of this Act are declared to be an emergency measure, and those funds are available immediately upon the filing of this Act with the secretary of state.

Approved May 2, 2001
Filed May 3, 2001

CHAPTER 29

SENATE BILL NO. 2004

(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 of the North Dakota Century Code, relating to a donated dental services program; to amend and reenact subdivision b of subsection 1 of section 14-02.1-02.1 and section 23-01-05 of the North Dakota Century Code, relating to information regarding fetal development and to the qualifications of the state health officer; to provide an exception to section 54-44.1-06 of the North Dakota Century Code, relating to the preparation of the state department of health appropriations bill for the 2003-05 biennium; and to provide statements 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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state department of health for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$28,636,615
Operating expenses	15,647,794
Equipment	1,265,451
Capital improvements	41,704
Grants	23,387,670
Centers for disease control tobacco funds	2,369,934
Tobacco prevention and control	4,700,000
WIC food payments	<u>17,000,000</u>
Total all funds	\$93,049,168
Less estimated income	<u>78,236,232</u>
Total general fund appropriation	\$14,812,936

SECTION 2. ABANDONED MOTOR VEHICLE DISPOSAL FUND. The estimated income line item included in section 1 of this Act includes \$300,000, 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, 2001, and ending June 30, 2003.

SECTION 3. ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item included in section 1 of this Act includes \$200,000, 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, 2001, and ending June 30, 2003.

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, 2001, and ending June 30, 2003.

SECTION 5. ENVIRONMENTAL HEALTH PRACTITIONER LICENSURE FEE ADMINISTRATIVE FUND. The estimated income line item included in section 1 of this Act includes \$2,000, 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, 2001, and ending June 30, 2003.

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, 2001, and ending June 30, 2003.

SECTION 7. COMMUNITY HEALTH TRUST FUND. The estimated income line item included in section 1 of this Act includes \$4,700,000, 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, 2001, and ending June 30, 2003.

SECTION 8. WATER DEVELOPMENT TRUST FUND. The estimated income line item included in section 1 of this Act includes \$99,756, or so much of the sum as may be necessary, to be made available to the state department of health from the water development trust fund for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 9. GRANTS - NORTH DAKOTA STOCKMEN'S ASSOCIATION - REFUND FUND TRANSFER. The grants line item in section 1 of this Act includes \$50,000 from the attorney general refund fund from lawsuit settlement collections, which the state department of health shall distribute to the North Dakota stockmen's association for the purpose of developing and beginning to implement a plan to reduce the potential environmental impact from livestock operations, for the biennium beginning July 1, 2001, and ending June 30, 2003. These funds, and funds of the North Dakota stockmen's association, must be used as matching funds for federal environmental protection agency 319 funds. The funds from the attorney general refund fund must be transferred to the state department of health operating fund as requested by the state health officer.

¹⁴ **SECTION 10. AMENDMENT.** Subdivision b of subsection 1 of section 14-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

- b. Materials, published in a booklet format, designed to inform the woman of the probable anatomical and physiological characteristics of the fetus at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the survival

¹⁴ Section 14-02.1-02.1 was also amended by section 1 of Senate Bill No. 2361, chapter 144.

of the fetus and pictures representing the development of a fetus at two-week gestational increments. The majority of the pictures included in the booklet must be full color photograph-style images and the pictures must contain the dimensions of the fetus and must be realistic and appropriate for the stage of pregnancy depicted. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the fetus at the various gestational ages.

SECTION 11. AMENDMENT. Section 23-01-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-05. Health officer - Qualifications, salary, term, duties - Advisory committee. The governor shall appoint the state health officer who must have had ~~postgraduate training or experience in public health administration~~ substantive private or public administrative experience and demonstrated experience in the management of people. The state health officer is entitled to receive a salary commensurate with that person's training and experience. The governor shall set the salary of the state health officer within the limits of legislative appropriations to the department. The state health officer is entitled to receive all necessary traveling expenses incurred in the performance of official business. The state health officer may not engage in any other occupation or business that may conflict with the statutory duties of the state health officer and holds office for a term of four years beginning January 1, 1993. The state health officer is the administrative officer of the state department of health. If the governor does not appoint as state health officer a physician licensed in this state, the governor shall appoint at least three licensed physicians recommended by the state medical association to serve as an advisory committee to the state health officer. Each member of the advisory committee is entitled to receive reimbursement of expenses in performing official duties in amounts provided by law for other state officers. The term of the advisory committee coincides with the term of the state health officer. A committee member serves at the pleasure of the governor. The duties of the state health officer are as follows:

1. Enforce all rules and regulations as promulgated by the health council.
2. Hold public health unit boards of health responsible for enforcement of state rules, serve in an advisory capacity to public health unit boards of health, and provide for coordination of health activities.
3. Establish and enforce minimum standards of performance of the work of the local department of health.
4. Study health problems and plan for their solution as may be necessary.
5. Collect, tabulate, and publish vital statistics for each important political or health administrative unit of the state and for the state as a whole.
6. Promote the development of local health services and recommend the allocation of health funds to local jurisdictions subject to the approval of the health council.
7. Collect and distribute health education material.
8. Maintain a central public health laboratory and where necessary, branch laboratories for the standard function of diagnostic, sanitary and

chemical examinations, and production and procurement of therapeutic and biological preparations for the prevention of disease and their distribution for public health purposes.

9. Establish a service for medical hospitals and related institutions to include licensing of such institutions according to the standards promulgated by the health council and consultation service to communities planning the construction of new hospitals and related institutions.
10. Comply with the state merit system policies of personnel administration.
11. Establish a program to provide information to the surviving family of a child whose cause of death is suspected to have been the sudden infant death syndrome.
12. Issue any orders relating to disease control measures deemed necessary to prevent the spread of communicable disease. Disease control measures may include special immunization activities and decontamination measures. The state health officer may apply to the district court in a judicial district where a communicable disease is present for an injunction canceling public events or closing places of business. On application of the state health officer showing the necessity of such cancellation, the court may issue an ex parte preliminary injunction, pending a full hearing.
13. Make bacteriological examination of bodily secretions and excretions and of waters and foods.
14. Make preparations and examinations of pathological tissues submitted by the state health officer, by any county superintendent of public health, or by any physician who has been regularly licensed to practice in this state.
15. Make all required analyses and preparations, and furnish the results thereof, as expeditiously and promptly as possible.
16. Cause sanitary statistics to be collected and tabulated, and cause to be ascertained by research work such methods as will lead to the improvement of the sanitation of the various parts of the state.
17. From time to time, cause to be issued bulletins and reports setting forth the results of the sanitary and pathological work done in the laboratories embodying all useful and important information resulting from the work carried on in the laboratories during the year, the substance of such bulletins and reports to be incorporated in the annual report of the state health officer.
18. Establish by rule a schedule of reasonable fees that may be charged for laboratory analysis. No charge may be made for any analysis conducted in connection with any public health incident affecting an entire region, community, or neighborhood.

SECTION 12. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Donated dental services program. The state department of health shall contract with the North Dakota dental association, or other appropriate and qualified organizations, to develop and administer a donated dental services program through which volunteer dentists provide comprehensive dental care for needy, disabled, aged, or medically compromised individuals. The volunteers will treat individuals through the program and, with the exception of certain dental laboratory costs, will fully donate their services and supplies. The contract must specify the responsibilities of the administering organization and include:

1. Establishment of a network of volunteer dentists, including dental specialists, volunteer dental laboratories, and other appropriate volunteer professionals to donate dental services to eligible individuals;
2. Establishment of a system to refer eligible individuals to appropriate volunteers;
3. Development and implementation of a public awareness campaign to educate eligible individuals about the availability of the program;
4. Provision of appropriate administrative and technical support to the program; and
5. Submission of an annual report to the state department of health that:
 - a. Accounts for all program funds;
 - b. Reports the number of individuals served by the program and the number of dentists and dental laboratories participating as providers in the program;
 - c. Includes any other information required by the state department of health; and
 - d. Performs, as required by the state department of health, any other duty relating to the program.

¹⁵ **SECTION 13. STATE DEPARTMENT OF HEALTH APPROPRIATIONS BILL - EXECUTIVE BUDGET RECOMMENDATION.** Notwithstanding North Dakota Century Code section 54-44.1-06, the office of the budget shall submit for introduction to the fifty-eighth legislative assembly the state department of health appropriations bill for the 2003-05 biennium reflecting the same funding levels by line item and employee levels authorized by the fifty-seventh legislative assembly for the 2001-03 biennium. Any budget changes recommended by the office of the budget for the state department of health for the 2003-05 biennium must be presented to the appropriations committees of the fifty-eighth legislative assembly as a recommendation for change to the bill as introduced.

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

¹⁵ Section 13 was vetoed by the Governor, see chapter 589.

SECTION 15. LEGISLATIVE INTENT - STATE AID TO LOCAL HEALTH DISTRICTS. It is the intent of the legislative assembly that the state department of health provide aid to local health districts grants during the biennium beginning July 1, 2001, and ending June 30, 2003, totaling \$1,100,000 and that the additional \$100,000 necessary to fund that level be found by the department within its appropriation.

SECTION 16. LEGISLATIVE INTENT - CENTERS FOR DISEASE CONTROL AND PREVENTION FUNDS. It is the intent of the legislative assembly that the state department of health use the grant funds from the centers for disease control and prevention, as allowed, to fund tobacco counter-marketing and public education campaigns and local tobacco prevention coordinators and that local public health administrators supervise the local tobacco prevention coordinators. Funds may not be used for lobbying purposes.

Approved May 9, 2001
Filed May 10, 2001

CHAPTER 30**SENATE BILL NO. 2005**
(Appropriations Committee)
(At the request of the Governor)**INDIAN AFFAIRS COMMISSION**

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$300,037
Operating expenses	35,022
Equipment	<u>1,000</u>
Total general fund appropriation	\$336,059

Approved April 17, 2001
Filed April 17, 2001

CHAPTER 31**SENATE BILL NO. 2006**

(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, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$636,277
Operating expenses	1,314,767
Equipment	61,500
Capital improvements	110,000
Grants	<u>13,005,000</u>
Total all funds	\$15,127,544
Less estimated income	<u>14,577,544</u>
Total general fund appropriation	\$550,000

Approved April 17, 2001

Filed April 17, 2001

CHAPTER 32**SENATE BILL NO. 2007**

(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 veterans' home; to provide for a report to the legislative assembly; 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 veterans' home and the department of veterans' affairs for the purpose of defraying their expenses, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

VETERANS' HOME

Salaries and wages	\$6,861,243
Operating expenses	2,137,631
Equipment	88,675
Capital improvements	<u>344,460</u>
Total all funds	\$9,432,009
Less estimated income	<u>6,099,935</u>
Total general fund appropriation	\$3,332,074

Subdivision 2.

VETERANS' AFFAIRS

Total all funds	\$514,319
Less estimated income	<u>20,789</u>
Total general fund appropriation	\$493,530
Grand total general fund appropriation S.B. 2007	\$3,825,604
Grand total special funds appropriation S.B. 2007	\$6,120,724
Grand total all funds appropriation S.B. 2007	\$9,946,328

SECTION 2. NORTH DAKOTA VETERANS' HOME - PERFORMANCE AUDIT. The state auditor shall conduct a performance audit of the veterans' home during the biennium beginning July 1, 2001, and ending June 30, 2003. The state auditor may use the services of a consultant, as needed, and the cost of such consultant may be assessed to the veterans' home. The performance audit may include a review of the contractual arrangements for physician services at the veterans' home. The results of the performance audit must be presented to the appropriations committees during the agency's budget presentation during the fifty-eighth legislative assembly.

SECTION 3. LEGISLATIVE COUNCIL STUDY - VETERANS' HOME MANAGEMENT STRUCTURE AND OVERSIGHT. The legislative council shall consider studying during the 2001-02 interim the management structure and oversight of the veterans' home and the selection process for the commandant or administrator of the home. The study, if conducted, may review the timing of expenditures by the veterans' home from the general fund.

SECTION 4. 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-eighth legislative assembly. The report must be presented during the agency's budget presentation.

Approved April 23, 2001

Filed April 23, 2001

CHAPTER 33

SENATE BILL NO. 2008

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

BANKING AND FINANCIAL INSTITUTIONS

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 banking and financial institutions for the purpose of defraying the expenses of the department of banking and financial institutions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$2,759,337
Operating expenses	731,818
Equipment	52,700
Contingency	<u>20,000</u>
Total appropriation from the financial institutions regulatory fund	\$3,563,855

SECTION 2. ADDITIONAL FULL-TIME EQUIVALENT POSITION - DEFERRED PRESENTMENT SERVICE PROVIDER REGULATION. The department of banking and financial institutions shall assess the need for additional staff relating to the licensing and regulation of deferred presentment service providers during the biennium beginning July 1, 2001, and ending June 30, 2003. If determined necessary by the department, the department is authorized an additional .5 full-time equivalent position for the licensing and regulation of deferred presentment service providers, upon approval of the emergency commission and the budget section of the legislative council.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 34**SENATE BILL NO. 2009**

(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.

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, 2001, and ending June 30, 2003, as follows:

Capital improvements	\$210,000
Premiums	<u>385,000</u>
Total all funds	\$595,000
Less estimated income	<u>20,000</u>
Total general fund appropriation	\$575,000

Approved April 27, 2001
Filed April 27, 2001

CHAPTER 35**SENATE BILL NO. 2010**

(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, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$410,542
Operating expenses	200,810
Equipment	5,700
Grants	1,242,657
Lewis and Clark bicentennial	<u>174,948</u>
Total all funds	\$2,034,657
Less estimated income	<u>1,052,229</u>
Total general fund appropriation	\$982,428

SECTION 2. APPROPRIATION. All income from the cultural endowment fund is appropriated for the furthering of the cultural arts in the state for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 17, 2001
Filed April 17, 2001

CHAPTER 36

SENATE BILL NO. 2011

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

HIGHWAY PATROL

AN ACT to provide an appropriation for defraying the expenses of the highway patrol; and to 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 highway patrol for the purpose of defraying its expenses, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Administration	\$2,164,675
Field operations	30,095,704
Law enforcement training academy	<u>982,723</u>
Total all funds	\$33,243,102
Less estimated income	<u>13,629,443</u>
Total general fund appropriation	\$19,613,659

SECTION 2. SPECIAL FUNDS TRANSFER. The less estimated income line item in section 1 of this Act includes the sum of \$6,200,000, or so much of the sum as may be necessary, from the state highway 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, 2001, and ending June 30, 2003.

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, 2001, and ending June 30, 2003. 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 without the presentation of receipts or other memorandums at the time and in the same manner as salaries of members of the highway patrol are paid.

SECTION 4. LEGISLATIVE INTENT - PERFORMANCE MEASURE MONITORING. It is the intent of the legislative assembly that the highway patrol monitor its actual to planned expenditures and its actual to projected performance measures by program for the biennium beginning July 1, 2001, and ending June 30, 2003. The highway patrol shall make this information available as requested by the appropriations committees of the fifty-eighth legislative assembly.

Approved May 4, 2001
Filed May 8, 2001

CHAPTER 37

SENATE BILL NO. 2012 (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 provide for a legislative council study; to provide a contingent appropriation; to amend and reenact section 39-06-19, subsection 1 of section 39-06.2-09, and section 39-09-02 of the North Dakota Century Code, relating to highways and operators' licenses; 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 various divisions under the supervision of the director of the department of transportation for the purpose of defraying their expenses, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$99,859,596
Operating expenses	118,331,562
Equipment	28,251,600
Capital improvements	457,084,500
Grants	<u>32,839,085</u>
Total special funds appropriation	\$736,366,343

SECTION 2. LEGISLATIVE COUNCIL STUDY - FLEET SERVICES. The legislative council shall consider studying, during the 2001-02 interim, the efficiency and effectiveness of the operations of the state fleet services program of the department of transportation.

SECTION 3. CONTINGENT APPROPRIATION - GENERAL LICENSE PLATE ISSUE. If the fifty-seventh legislative assembly approves additional revenues specifically identified for the purpose of providing funding for the additional cost of a general license plate issue, there is appropriated out of any moneys in the highway fund in the state treasury, not otherwise appropriated, the sum of \$3,200,000, to the department of transportation for the purpose of defraying the expenses of a general license plate issue, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 4. APPROPRIATION - 1999-2001 BIENNIUM. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income, to the department of transportation for the purpose of defraying the expenses of its various divisions, for the period beginning with the effective date of this Act and ending June 30, 2001, as follows:

Motor vehicle	\$508,083
Highways	49,186,400
Total special funds	\$49,694,483

SECTION 5. AMENDMENT. Section 39-06-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-06-19. Expiration of license - Renewal.

1. Every operator's license issued under this chapter expires and is renewed according to this section. The expiration date of an operator's license for ~~every~~ a person whose birth occurred in a year ending in an odd numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of an operator's license for ~~every~~ a person whose birth occurred in a year ending in an even numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral.
2. If the licensee has reached the age of eighteen, and desires reissuance of a license with the distinctive background for licensees at least the age of eighteen and under the age of twenty-one, the applicant may apply at any time for a replacement license. If the licensee has reached the age of twenty-one and desires reissuance of a license without the distinctive color background required by section 39-06-14, the applicant may apply at any time for a replacement license. ~~In all other cases,~~
3. An applicant for renewal must present the application with fee for renewal of license must be presented to the director not prior to before ten months before the expiration date of the operator's license. The director may require an examination of an applicant as upon an original application. After the initial application for a license in this state, the director may not require an applicant for renewal, replacement, or a substitute to provide a social security card unless the applicant is changing the distinguishing number on the license to the applicant's social security number. The director may not renew an operator's license if the license has been suspended under section 14-08.1-07. Upon the recommendation of the court, the director may issue a temporary permit to the licensee under section 39-06.1-11 if the temporary permit is necessary for the licensee to work and the court has determined the licensee is making a good-faith effort to comply with the child support order.
4. Every application for renewal of a license by an applicant must be accompanied by a certificate of examination from either the driver licensing or examining authorities or a physician or an optometrist, licensed in this or another state, containing a statement as to the corrected and uncorrected vision of the applicant. The director shall provide visual examination equipment at each location where a license may be renewed. The initial application for a motor vehicle operator's license may be accompanied by a statement of examination from a licensed physician or an optometrist, stating the corrected and uncorrected vision of the applicant, in lieu of the department examination. ~~Such~~ This examination must be within six months of the driver license application.

5. Every person submitting an application and fee for renewal of license one year or more after the expiration of a license, except an applicant whose military service has terminated less than thirty days prior to such application, must be treated as a new driver.
6. The fee for renewal or replacement of an operator's license is ten dollars.

¹⁶ **SECTION 6. AMENDMENT.** Subsection 1 of section 39-06.2-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Content of license. The commercial driver's license must be marked "commercial driver's license", and must be, to the maximum extent practicable, tamper proof. It must include the following information:
 - a. The name and residential address of the person;
 - b. The person's color photograph;
 - c. A physical description of the person, including sex, height, weight, and eye and hair color;
 - d. Date of birth;
 - e. ~~The~~ A distinguishing number assigned to the person which upon request may be a number different from the person's social security number;
 - f. The person's signature;
 - g. The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions;
 - h. The name of this state; and
 - i. The dates between which the license is valid.

¹⁷ **SECTION 7. 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:

¹⁶ Section 39-06.2-09 was also amended by section 2 of House Bill No. 1175, chapter 344.

¹⁷ Section 39-09-02 was also amended by section 2 of House Bill No. 1239, chapter 342. Section 7 was vetoed by the Governor, see chapter 586.

- 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.
 - 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].
 - 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~~ Seventy-five miles [~~142.65~~ 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. If there is a violation of a highway construction zone speed limit, where within that zone individuals engaged in construction were present at the time of the violation, then the fees required 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. However, if a greater fee would be applicable under section 39-06.1-06, then that fee is required for the noncriminal disposition. The highway construction zone speed limit posted sign must state "Minimum Fee \$40".

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.
5. ~~Repealed by S.L. 1975, ch. 346, § 3.~~

SECTION 8. EMERGENCY. Section 4 of this Act is declared to be an emergency measure.

Approved April 28, 2001
Filed May 3, 2001

CHAPTER 38

SENATE BILL NO. 2013

(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.

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, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$1,836,257
Operating expenses	736,457
Equipment	48,050
Grants	4,888,100
Total special funds	<u>\$7,508,864</u>

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, 2001, and ending June 30, 2003.

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. DISTRIBUTIONS TO STATE INSTITUTIONS. Notwithstanding section 15-03-05.2, during the biennium beginning July 1, 2001, and ending June 30, 2003, 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	\$1,330,974
University of North Dakota	995,011
Youth correctional center	502,823
School for the deaf	465,000
North Dakota state college of science	392,994
State hospital	374,856
Veterans' home	320,000
Valley City state university	310,199

School for the blind	290,000
Mayville state university	217,891
Minot state university - Bottineau	38,900
Dickinson state university	38,864
Minot state university	<u>38,850</u>
Total	\$5,316,362

Approved April 23, 2001

Filed April 23, 2001

CHAPTER 39

SENATE BILL NO. 2014

(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; 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 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, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$75,549
Operating expenses	65,901
Grants	<u>7,680,361</u>
Total all funds	<u>\$7,821,811</u>

SECTION 2. GRANTS - BUDGET SECTION APPROVAL. Of the \$7,680,361 appropriated in the grants line item in section 1 of this Act, the children's services coordinating committee shall provide grants of \$600,000 to the department of human services for the partnership project that is providing services to children with serious emotional disorders in the eight human service centers, \$200,000 to the department of human services for the Native American alcohol and drug abuse education program, and \$50,000 to the sacred child project during the biennium beginning July 1, 2001, and ending June 30, 2003. Any other statewide grants distributed by the committee, unless specifically approved by the legislative assembly, are subject to budget section approval.

SECTION 3. ADDITIONAL INCOME - EMERGENCY COMMISSION APPROVAL. All income of the children's services coordinating committee in excess of the estimated income line item appropriated in section 1 of this Act is appropriated to the children's services coordinating committee for the biennium beginning July 1, 2001, and ending June 30, 2003, and may be spent only upon authorization of the emergency commission.

SECTION 4. LEGISLATIVE INTENT - FUNCTION OF REGIONAL AND TRIBAL CHILDREN'S SERVICES COORDINATING COMMITTEES. It is the intent of the 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 5. REFINANCING FUND ALLOCATIONS. Of the \$8,333,333 of 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, 2001, and ending June 30, 2003:

AGENCY/ORGANIZATION	ALLOCATION
Department of human services	10 percent
Children's services coordinating committee - Administration	1.7 percent
Children's services coordinating committee - Grants to regional and tribal children's services coordinating committees for administrative costs	16.2 percent
Children's services coordinating committee - Grants to regional and tribal children's services coordinating committees for collaboration efforts	1.8 percent
Regional and tribal children's services coordinating committees - Grants, including those to participating entities	60.10 percent, includes 20 percent that is returned to participating entities
Children's services coordinating committee - Statewide grants	10.2 percent

If less than \$8,333,333 is generated as a result of participating entities claiming federal administrative cost reimbursements for the 2001-03 biennium, the children's services coordinating committee shall proportionately reduce the percentage allocation for regional and tribal children's services coordinating committee grants to generate the funds necessary to provide \$141,450 for children's services coordinating committee administration for the 2001-03 biennium, \$1,350,000 for grants to regional and tribal committees for administrative costs for the 2001-03 biennium, \$150,000 for grants to regional and tribal children's services coordinating committees for collaboration efforts for the 2001-03 biennium, and \$850,000 for statewide grants for the 2001-03 biennium under this section. Any funds received by the state as a result of participating entities claiming federal administrative cost reimbursements through the department of human services in excess of \$8,333,333 for the biennium beginning July 1, 2001, and ending June 30, 2003, and must be distributed, subject to emergency commission approval, as follows:

AGENCY/ORGANIZATION	ALLOCATION
Regional and tribal children's services coordinating committees - Grants, including those to participating entities	100 percent, includes 20 percent that is returned to participating entities

Approved April 17, 2001

Filed April 17, 2001

CHAPTER 40**SENATE BILL NO. 2015**

(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 authorize transfers; to limit Bank of North Dakota transfers to the general fund; to provide legislative intent; 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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state industrial commission and agencies under its control for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

Salaries and wages	\$6,330,025
Operating expenses	1,805,269
Equipment	154,000
Grants	16,450,000
Bond payments	17,956,059
Geophysical exploration	254,818
Total all funds	\$42,950,171
Less estimated income	<u>35,585,990</u>
Total general fund appropriation	<u>\$7,364,181</u>

Subdivision 2.

BANK OF NORTH DAKOTA - OPERATIONS

Salaries and wages	\$15,416,543
Operating expenses	11,747,824
Equipment	736,500
Capital improvements	30,000
Contingency	<u>2,850,000</u>
Total appropriation from Bank of North Dakota fund	<u>\$30,780,867</u>

Subdivision 3.

BANK OF NORTH DAKOTA - ECONOMIC DEVELOPMENT

Partnership in assisting community expansion fund	\$6,000,000
Agriculture partnership in assisting community expansion fund	1,500,000
Beginning farmer	<u>1,000,000</u>
Total general fund appropriation	<u>\$8,500,000</u>

Subdivision 4.

MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$13,887,818
Operating expenses	7,553,476
Contingency	250,000
Agriculture promotion	<u>50,000</u>
Total appropriation from mill and elevator fund	\$21,741,294

Subdivision 5.

HOUSING FINANCE AGENCY

Salaries and wages	\$3,369,713
Operating expenses	2,213,510
Equipment	125,000
Grants	34,064,040
HFA contingency	<u>100,000</u>
Total appropriation from housing finance agency fund	\$39,872,263
Grand total general fund appropriation S.B. 2015	\$15,864,181
Grand total special funds appropriation S.B. 2015	\$127,980,414
Grand total all funds appropriation S.B. 2015	\$143,844,595

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 hereby 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, 2001, and ending June 30, 2003.

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 hereby 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, 2001, and ending June 30, 2003.

SECTION 4. TRANSFER. The sum of \$65,447, 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, 2001, and ending June 30, 2003, upon order of the industrial commission.

SECTION 5. TRANSFER. The sum of \$85,403, 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, 2001, and ending June 30, 2003, upon order of the industrial commission.

SECTION 6. TRANSFER. The sum of \$56,936, 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, 2001, and ending June 30, 2003, upon order of the industrial commission.

SECTION 7. TRANSFER. The sum or \$19,957, 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, 2001, and ending June 30, 2003, upon order of the industrial commission.

SECTION 8. INCOME AUTHORIZATION - STUDENT LOAN TRUST. There is hereby authorized the receipt of fees by the industrial commission in the sum of \$75,550, 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, 2001, and ending June 30, 2003, upon order of the industrial commission.

SECTION 9. TRANSFER. The industrial commission shall transfer to the general fund in the state treasury, the sum of \$6,000,000 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, 2001, and ending June 30, 2003.

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 \$17,956,059 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, 2001, and ending June 30, 2003:

Higher education institutions	\$12,730,841
Job service	295,047
Department of human services	577,764
Department of human services - State hospital	566,500
Department of human services - Developmental center at westwood park, Grafton	649,234
Department of corrections - State penitentiary	2,250,168
Department of corrections - Youth correctional center	541,427
Adjutant general	73,950
Veterans' home improvement fund	271,128
Total	\$17,956,059

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 agricultural 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. BEGINNING FARMER AND AG PACE FUND TRANSFERS.

Notwithstanding any other provision of law, the industrial commission may transfer any unobligated funds between the beginning farmer loan fund and the agriculture partnership in assisting community expansion fund during the period beginning January 1, 2003, and ending June 30, 2003.

SECTION 14. BANK OF NORTH DAKOTA TRANSFERS TO GENERAL FUND - LIMITATIONS. Any transfer provided for in House Bill No. 1015 may only be made to the extent that the transfer does not reduce the Bank's capital structure below \$140,000,000.

SECTION 15. LEGISLATIVE INTENT - INFORMATION TECHNOLOGY SHARED SERVICES. It is the intent of the legislative assembly that the information technology coordinators employed by the oil and gas division and geological survey share knowledge, expertise, duties, and responsibilities in an effort to increase efficiencies and avoid duplication.

SECTION 16. LEGISLATIVE COUNCIL STUDY - INDUSTRIAL COMMISSION. The legislative council shall consider studying during the 2001-02 interim the mission of the industrial commission relating to the responsibilities of the oil and gas division and geological survey and the potential for efficiencies resulting from shared administrative and service delivery functions.

SECTION 17. EMERGENCY. The appropriation in subdivision 3 of section 1 and the transfer in section 12 of this Act for the partnership in assisting community expansion fund and the agriculture partnership in assisting community expansion fund are declared to be emergency measures.

Approved April 28, 2001
Filed April 28, 2001

CHAPTER 41

SENATE BILL NO. 2016

(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 provide for line item transfers; to provide legislative intent; to provide for a legislative council study; to create and enact a new section to chapter 54-23.3 of the North Dakota Century Code, relating to the establishment of new programs by the director of the department of corrections and rehabilitation; and to amend and reenact section 12-59-02, subsection 1 of section 12.1-32-08, and subsection 2 of section 54-23.4-12 of the North Dakota Century Code, relating to compensation of parole board members, indigent defense costs and expenses, and crime victims compensation subrogation.

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 its various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

CENTRAL OFFICE

Salaries and wages	\$1,155,357
Operating expenses	171,447
Equipment	<u>65,750</u>
Total all funds	\$1,392,554
Less estimated income	<u>11,160</u>
Total general fund appropriation	\$1,381,394

Subdivision 2.

JUVENILE SERVICES

Salaries and wages	\$10,647,498
Operating expenses	4,917,407
Equipment	148,700
Capital improvements	707,747
Grants	<u>4,413,877</u>
Total all funds	\$20,835,229
Less estimated income	<u>7,825,075</u>
Total general fund appropriation	\$13,010,154

Subdivision 3.

ADULT SERVICES

Victims services	\$3,423,566
Institutional offender services	3,863,128

Community offender services	11,353,870
Support services	21,514,202
Program services	3,778,761
Security and safety	24,977,530
Roughrider industries	10,842,290
Total all funds	\$79,753,347
Less estimated income	17,296,864
Total general fund appropriation	\$62,456,483
Grand total general fund appropriation S.B. 2016	\$77,048,031
Grand total special fund appropriation S.B. 2016	\$25,133,099
Grand total all funds appropriation S.B. 2016	\$102,181,130

SECTION 2. LAND BOARD DISTRIBUTIONS. The estimated income line item in subdivision 2 of section 1 of this Act includes \$502,823 from permanent funds managed for the benefit of the youth correctional center by the board of university and school lands.

SECTION 3. AUTHORITY TO LEASE LAND UNDER THE JURISDICTION OF THE DEPARTMENT. The department of corrections and rehabilitation may lease land under the jurisdiction of the department for the purpose of the construction and operation of a prerelease center. Subsection 12 of section 54-23.3-04 does not apply to the lease authorized by this section. The lease expires when the leased property is no longer used for a prerelease center, when the lease operator breaches any material part of the lease, or twenty years after the date of the lease, whichever occurs first, and all rights, title, and interest in any buildings, fixtures, and improvements vest and remain with the state.

SECTION 4. DEPARTMENT OF CORRECTIONS AND REHABILITATION - LEGISLATIVE COUNCIL STUDY AND REPORTS. During the 2001-02 interim, the legislative council shall consider studying wages paid to inmates sentenced to the state correctional system and the various deductions from those wages, including methods used to determine rates of pay; actual wages paid to inmates; deductions from inmate wages; and the effect deductions for incarceration costs, facility operation costs, and capital improvement costs have on inmate payments for child support and restitution. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 5. DEPARTMENT OF CORRECTIONS AND REHABILITATION - FACILITY AND OPERATIONS - LEGISLATIVE COUNCIL STUDY. The legislative council shall study, during the 2001-02 interim, the facilities and operations of the department of corrections and rehabilitation and report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly. The study must include the use of consultant services as determined by the legislative council. The study must include the following:

1. An analysis and evaluation of all facilities currently used by the department of corrections and rehabilitation and all facilities currently used by the state hospital which may at some time be used by the department, including:
 - a. The age, condition, and adequacy of each facility.
 - b. The operational efficiency of each facility, including utility costs and staffing needs.

- c. Modifications, if any, required to allow the department to meet the various needs of adult offenders.
2. An analysis and evaluation of future facility needs, including:
 - a. The types of facilities needed to serve adult offenders.
 - b. The most appropriate location for the department's various facilities, considering:
 - (1) The operational inefficiencies of maintaining multiple facilities.
 - (2) The administrative benefits of having multiple facilities in which to place offenders.
 - (3) The availability of education, treatment, and work programs for inmates.
3. An analysis and evaluation of the staffing needs of the department, including:
 - a. Current staff utilization and needs at each facility.
 - b. Availability of potential employees in each region in which the department operates or may operate a correctional facility.
4. An analysis and evaluation of the anticipated need for additional prison beds, considering the following:
 - a. The impact of changes in sentencing laws.
 - b. The impact of programs that provide alternatives to conventional incarceration.
 - c. Trends in occurrence and types of crime committed in the state.
 - d. The utilization and availability of existing and proposed county or regional correctional facilities.
 - e. The utilization and availability of existing and proposed private correctional facilities.
5. A cost-benefit analysis of the department's current and proposed programs, considering:
 - a. The effect on recidivism.
 - b. The necessity and effectiveness of providing rehabilitation and treatment services.
 - c. The availability of rehabilitation and treatment services which could be provided by entities or agencies other than the department, including regional human service centers.

SECTION 6. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the legislative council for the biennium beginning July 1, 2001, and ending June 30, 2003, for the purpose of contracting with a consultant to conduct the study as provided in section 5 of this Act.

SECTION 7. FEDERAL FUNDING REDUCTIONS - BUDGET SECTION APPROVAL. If, during the biennium beginning July 1, 2001, and ending June 30, 2003, the federal government reduces funding below the level anticipated by the fifty-seventh legislative assembly for any programs administered by the department of corrections and rehabilitation, the department may not supplant the federal funds with general or special fund moneys without first obtaining the approval of the budget section of the legislative council. The department's budget request for the biennium beginning July 1, 2003, and ending June 30, 2005, must identify any programs for which general or special fund appropriation authority is requested to replace federal funds previously available for the program.

SECTION 8. OPERATION OF "PRERELEASE" AND "DUI OFFENDER TREATMENT" PROGRAMS - REPORT TO THE FIFTY-EIGHTH LEGISLATIVE ASSEMBLY. During the biennium beginning July 1, 2001, and ending June 30, 2003, the department of corrections and rehabilitation shall monitor the operation of the programs known as the "prerelease center" and the "DUI offender treatment center" authorized by the fifty-seventh legislative assembly. The department shall present a report to the appropriations committees of the fifty-eighth legislative assembly regarding the operation of the programs, including the impact of the programs on recidivism rates; the cost-effectiveness of the programs; the success of the programs; the ability to collect fees, if any, from the participating inmates; and a comparison of the costs and benefits of the "prerelease center" and the "DUI offender treatment center" to other forms of treatment or incarceration.

SECTION 9. LEGISLATIVE INTENT - FUNDING FOR DRUG COURT PROGRAM. It is the intent of the fifty-seventh legislative assembly that the department of corrections and rehabilitation seek federal funding to support the drug court program during the biennium beginning July 1, 2001, and ending June 30, 2003. If federal funds do not become available to the department to support the program, special funds derived from other income of the department may be used to fund the program. If federal funds become available during the biennium, the department must use the federal funds, and any required matching funds to be provided from special funds, to fund the program for the remainder of the biennium before funds from any other source are used for this purpose. Special fund moneys not used for the drug court program pursuant to this section must be used in place of general fund moneys appropriated by the fifty-seventh legislative assembly for other programs operated by the department.

SECTION 10. AMENDMENT. Section 12-59-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-59-02. Meetings - Compensation - Rules. The governor shall appoint a member of the parole board to be chairman. The chairman of the parole board shall designate three members of the parole board for each meeting of the parole board. Meetings of the parole board must be held in accordance with rules established by the parole board and must be held as often as required to properly conduct the business of the board, but in any event not less than six times per year. The parole board may only take action upon the concurrence of at least two members who participated in the same meeting. The final decision of at least two parole board members who participated in the same parole board meeting constitutes the decision

of the parole board. Members are entitled to be compensated at the rate of ~~sixty-two~~ seventy-five dollars ~~and fifty cents~~ per day for each day actually and necessarily spent in the performance of their duties as board members plus the same mileage and expenses as are authorized for state officials and employees. The director of the division of parole and probation, or the director's designee, is the clerk for the parole board.

¹⁸ **SECTION 11. AMENDMENT.** Subsection 1 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Prior to~~ 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 ~~which~~ 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 ~~must be~~ 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 ~~may~~ shall order restitution be paid to the division of ~~parole and probation~~ adult services for any benefits ~~it~~ 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 ~~such~~ the order must be deducted from damages awarded in a civil action arising from the same incident. An

¹⁸ Section 12.1-32-08 was also amended by section 1 of Senate Bill No. 2081, chapter 299.

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.

SECTION 12. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

Reports regarding new programs. Notwithstanding the powers granted under section 54-23.3-04, the director of the department of corrections and rehabilitation may not authorize any new program to serve adult or juvenile offenders, including programs that provide alternatives to conventional incarceration and programs operated on a contract basis, if the program is anticipated to cost in excess of one hundred thousand dollars during the biennium in which the program is implemented or any subsequent biennium without first reporting to the legislative assembly or, if the legislative assembly is not in session, the budget section of the legislative council.

SECTION 13. AMENDMENT. Subsection 2 of section 54-23.4-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~Prior to~~ Before bringing an action to recover damages related to criminally injurious conduct for which compensation is claimed or awarded, the claimant shall give the division written notice of the proposed action. If a claimant brings an action for the recovery of damages related to criminally injurious conduct for which compensation is claimed or awarded, the division is subrogated to the rights of the claimant up to the total amount the division has paid. When there has been a recovery of damages, the costs of the action, to be paid by the division from the recovery, exclusive of attorney's fees, must be prorated and adjusted on the percentage of the total subrogation interest of the division recovered to the total recovery. If there is a recovery, the division shall pay attorney's fees to the claimant's attorney from the recovery in the amount of twenty-five percent of the subrogation interest recovered. For purposes of this section, recovery includes proceeds paid pursuant to a settlement, confession of judgment, or judgment of a court. The division may intervene in the action to recover compensation awarded. The division has a lien on a recovery to the extent it has paid compensation. The division is not liable for costs or attorney's fees when the claimant has not provided the division prior written notice of the commencement of an action. If a claimant does not bring an action for damages within six months from the date the division awarded benefits, the division may bring an action or claim for relief in the division's name and may retain as the division's subrogation interest the full amount the division has paid in compensation and benefits to a claimant. The division may bring an action within two years from the date the division first awarded benefits, notwithstanding any other statute of limitation. This section does not limit the claimant's right to bring an action to recover for other damages.

Approved May 10, 2001
Filed May 10, 2001

CHAPTER 42

SENATE BILL NO. 2017

(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 create and enact a new section to chapter 52-08 of the North Dakota Century Code, relating to job task analysis services; to amend and reenact subdivision a of subsection 3 of section 52-04-05 and section 52-04-22 of the North Dakota Century Code and section 4 of chapter 433 of the 1999 Session Laws, relating to unemployment compensation employer rates, the federal advance interest repayment fund, and the unemployment compensation incentive fund; to provide a continuing appropriation; to provide for retroactive application; 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 hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to job service North Dakota for the purpose of defraying its expenses, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$33,830,614
Operating expenses	13,420,143
Equipment	786,830
Capital improvements	453,545
Grants	7,818,672
Work Force 2000	<u>2,100,356</u>
Total all funds	\$58,410,160
Less estimated income	<u>56,309,804</u>
Total general fund appropriation	<u>\$2,100,356</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 hereby appropriated for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 3. WORK FORCE 2000 ALLOCATIONS. For the year beginning July 1, 2001, a minimum of \$150,000, of the \$2,100,356 provided for work force 2000, is to be available for projects in areas in the state which are not within five miles [8.05 kilometers] of any city with a population of more than eight thousand. Any work force 2000 funds remaining after June 30, 2002, may be used for projects in any area of the state.

¹⁹ **SECTION 4. AMENDMENT.** Subdivision a of subsection 3 of section 52-04-05 of the North Dakota Century Code as amended in section 1 of House Bill No. 1471, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

3. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. During the building of the trust fund reserve, the rate assigned to an employer may not exceed one hundred thirty percent of the previous year's rate for that employer and an employer may not receive more than a ten percent decrease in that employer's rate from the previous year's rate, for the calendar years 2000, 2001, and 2002. However, this rate limitation provision for calendar years 2000, 2001, and 2002 does not apply to an experience-rated employer that was a new employer the previous year, a negative employer that was a positive employer the previous year, a positive employer that was a negative employer the previous year, an employer that has failed to file a report, a new employer, and an employer that chose to make payments in lieu of contributions. ~~During the building of the trust fund reserve for calendar years 2000, 2001, and 2002, a negative employer that was a negative employer the previous year may not make excess contributions under subsection 4 of section 52-04-06 to become a positive employer.~~ The executive director may provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a thirty percent reduction to that employer's rate for any year if that employer has in place a plan approved by the bureau which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer account back into a negative status.

SECTION 5. AMENDMENT. Section 52-04-22 of the North Dakota Century Code is amended and reenacted as follows:

¹⁹ Section 52-04-05 was also amended by section 1 of House Bill No. 1087, chapter 453, and section 1 of House Bill No. 1471, chapter 452.

52-04-22. Federal advance interest repayment fund - Appropriation Continuing appropriation. There is created the federal advance interest repayment fund, to which will be credited all assessments collected by the division for the purpose of paying interest due on federal advances to the state trust fund. The fund must consist of all interest collected on delinquent contributions, all penalties provided by the Unemployment Compensation Law, and funds borrowed from sources other than federal advances which are placed in this fund. All moneys accruing to this fund in any manner must be maintained in this separate interest-bearing account at the Bank of North Dakota or invested in deposits of the Bank of North Dakota.

Moneys in this fund may also be used for the purpose of repaying funds placed in this fund which are borrowed from sources other than federal advances and for the purpose of paying interest due on other than federal advances. However, moneys in this fund may not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would in the absence of the moneys be available to finance expenditures for the administration of the bureau.

Moneys in this fund may also be used for the purpose of paying principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund also may be used for the purpose of paying principal and interest costs associated with the acquisition and renovation of land and building to be used as an office facility by job service North Dakota in Bismarck, North Dakota. Moneys in this fund may be used for the purpose of paying the costs of repair, renovation, or alteration of job service-owned office facilities. Moneys in this fund may be used for the purpose of paying the replacement rate charged for use of state fleet vehicles. Moneys in this fund are hereby appropriated for the purposes specified in this section including the purpose of paying principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Grand Forks, North Dakota. Moneys in this fund are appropriated for the purpose of paying the principal and interest costs associated with the acquisition and renovation of land and a building to be used as an office facility by job service North Dakota in Bismarck, North Dakota. Moneys in this fund are appropriated for the purpose of paying the costs of repair, renovation, or alteration of job service-owned office facilities. Moneys in this fund are appropriated for the purpose of paying the replacement rate charged for use of state fleet vehicles.

SECTION 6. A new section to chapter 52-08 of the North Dakota Century Code is created and enacted as follows:

Job task analysis services - Authorization to charge fees - Continuing appropriation. Job service North Dakota may provide job task analysis services to an employer requesting these services. Notwithstanding the reference to free public employment offices in this chapter or in any other provision of law, job service North Dakota may charge reasonable fees to employers for providing job task analysis services. All fees collected under this section must be deposited in a separate interest-bearing account at the Bank of North Dakota and must be used for the purpose of providing job task analysis services. Moneys in this fund are appropriated on a continuing basis for the purpose of providing job task analysis services.

SECTION 7. AMENDMENT. Section 4 of chapter 433 of the 1999 Session Laws is amended and reenacted as follows:

SECTION 4. APPROPRIATION. The unemployment compensation incentive fund is established from all moneys credited to this state under section 2 of this Act for federal fiscal years 2000, 2001, and 2002. ~~The amount of \$327,000 from this unemployment compensation incentive fund, to the extent funds are available in this fund, is hereby appropriated to job service North Dakota every year in which job service North Dakota achieves an average duration of benefits that is at least one-half week less than the average duration of benefits for the preceding program year, excluding every claimant who is on temporary layoff and returning to employment with the former employer within four weeks and excluding every claimant with demonstrated job attachment and a reasonable expectation of returning to a former base period employer once work becomes available for the biennium beginning July 1, 1999, and ending June 30, 2001. All moneys in this fund are appropriated to job service North Dakota for administration of the unemployment compensation program.~~

SECTION 8. RETROACTIVE APPLICATION. Section 4 of this Act is retroactive in application to January 1, 2000.

SECTION 9. EMERGENCY. Section 4 of this Act is declared to be an emergency measure.

Approved April 27, 2001
Filed April 27, 2001

CHAPTER 43

SENATE BILL NO. 2018

(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; and to authorize a loan from the general 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 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, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$656,859
Operating expenses	693,083
Equipment	<u>21,350</u>
Total special funds appropriation	\$1,371,292

SECTION 2. OFFICE OF ADMINISTRATIVE HEARINGS - LOAN FROM STATE GENERAL FUND - APPROPRIATION OF LOAN REPAYMENT. Notwithstanding any other provision of law, the office of administrative hearings may borrow up to \$100,000, which amount is appropriated from the state general fund during the biennium beginning July 1, 2001, and ending June 30, 2003. The office of administrative hearings shall inform the office of management and budget of any loan required pursuant to this section. Any loan made to the office of administrative hearings under this section must be repaid to the state general fund by June 30, 2003, and any loan repayments made by the office of administrative hearings are appropriated for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 44

SENATE BILL NO. 2019 (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 transfers of funds; to provide statements of legislative intent; to direct the state tax commissioner to audit the ethanol incentive program; to provide for legislative council studies; to provide for reports to the budget section; to create and enact a new section to chapter 54-34.4 of the North Dakota Century Code, relating to tourism copyrights and trademarks; to amend and reenact sections 4-14.1-07, 54-34.4-04, and 57-43.1-03.1 of the North Dakota Century Code, relating to ethanol plant production incentives, the motion picture development office advisory board, and tax refunds for fuel used for agricultural purposes; to provide an effective 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 department of commerce for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$6,103,893
Operating expenses	10,480,832
Equipment	199,936
Grants	36,330,226
North Dakota development fund	2,350,000
Agricultural products utilization	5,082,270
Lewis and Clark bicentennial	905,751
Transitional expenses	81,104
Total all funds	\$61,534,012
Less estimated income	<u>43,653,725</u>
Total general fund appropriation	\$17,880,287

SECTION 2. APPROPRIATION. All income received in excess of the amounts appropriated in section 1 of this Act relating to agricultural products utilization commission activities is appropriated to the agricultural products utilization commission for research, marketing, and utilization grants for the biennium beginning July 1, 2001, and ending June 30, 2003. Any funds received require the approval of the emergency commission before they may be expended.

SECTION 3. AGRICULTURAL FUEL TAX REFUND FUND. The estimated income line item in section 1 of this Act includes \$575,000 from the agricultural fuel tax fund for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 4. HIGHWAY TAX DISTRIBUTION FUND - ETHANOL PRODUCTION INCENTIVES - INFORMATION FILED WITH BUDGET SECTION -

CONTINGENT TRANSFER. The estimated income line item in section 1 of this Act includes \$2,500,000, or so much of the amount as may be necessary, from the highway tax distribution fund for the ethanol production incentive program. Distribution from the appropriation in section 1 of this Act to the producers of agriculturally derived fuel must be at the rate of forty cents for each gallon of agriculturally derived fuel produced in the state which is marketed by the producing plant to a distributor or wholesaler for sale. For purposes of this section, "gallon of agriculturally derived fuel" means a gallon of fuel that qualifies for the alcohol credit under 26 U.S.C. 40, specifically including fuel to which a denaturant has been added. An ethanol plant shall notify the agricultural products utilization commission, in writing, by October 1, 2001, of its intent to request ethanol incentive payments for the biennium beginning July 1, 2001, and ending June 30, 2003, to be eligible to receive payments authorized by this section. Payment to the producing plant must be approved by the agricultural products utilization commission upon presentation by the plant of an affidavit to the effect that the ethanol sold from the plant and for which the producer's credit is being sought is to be sold at retail to consumers. The affidavit of the producer of the ethanol must be accompanied by an affidavit from the wholesaler or retailer to the same effect. Within ninety days after the end of each fiscal year of the ethanol plant beginning after December 31, 1992, any North Dakota ethanol plant receiving production incentives from the state shall file with the budget section of the legislative council a statement, certified by a certified public accountant, as to whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received from this incentive program. If an ethanol plant has not notified the agricultural products utilization commission of its intent to request ethanol incentive payments for the biennium beginning July 1, 2001, and ending June 30, 2003, or if, at the end of each fiscal year, funding appropriated for the ethanol incentive payments is not spent, the director of the office of management and budget shall transfer from the highway tax distribution fund the amount of funds certified by the agricultural products utilization commission as not needed for ethanol incentive payments or the unspent funds deposited into the fund pursuant to provisions of section 57-43.1-03.1 to the agricultural fuel tax fund for the agricultural products utilization commission for the purpose of providing grants as provided by law.

SECTION 5. 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, 2001, and ending June 30, 2003.

SECTION 6. LEGISLATIVE INTENT - TOURISM OPERATING EXPENSES. It is the intent of the legislative assembly that the sum of \$3,300,437 included in the operating expenses line item in section 1 of this Act be allocated for tourism-related activities, including tourism-related administrative costs as approved by the tourism division director for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 7. DEPARTMENT OF COMMERCE - STATUS REPORTS - PERFORMANCE REPORT - BUDGET SECTION. The commissioner of the department of commerce shall periodically report to the budget section on the status of the establishment of the department of commerce during the 2001-02 interim. The director shall establish performance measures and report to the budget section at the budget section's first meeting after June 30, 2002, on the department's progress in achieving its performance measures for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 8. NORTH DAKOTA DEVELOPMENT FUND ALLOCATIONS.

The \$2,350,000 transferred to the North Dakota development fund for grants must be dedicated for projects as follows: forty percent businesses in rural areas, forty percent businesses in urban areas, and twenty percent North Dakota American Indian businesses. Any unused funds in any category may be transferred to another category during the second year of the biennium under rules adopted by the director of the department of economic development and finance. The director of the department of economic development and finance may reallocate up to twenty percent of any region's available remaining balance of regional rural development revolving loan funds to another region or regions for the biennium beginning July 1, 2001, and ending June 30, 2003. Of the amount available in the North Dakota development fund, \$4,000,000 or the unobligated balance on July 1, 2001, relating to the transfer of regional rural development revolving loan fund moneys, must continue to be dedicated for the purpose of providing financial assistance, research and development assistance, and loans or equity or debt financing on a matching basis to new or expanded primary sector businesses in areas of the state that are not within five miles [8.05 kilometers] of any city with a population of more than eight thousand. These funds must be allocated for the benefit of each of the areas delineated as regions by executive order of the governor pursuant to section 54-40.1-02.

SECTION 9. LEGISLATIVE INTENT - DEPARTMENT OF COMMERCE STRATEGIC PLAN.

It is the intent of the legislative assembly that the department of commerce, with the assistance of an economic development consultant, develop a strategic plan including the new economy initiative, with input from a task force including members of the economic development foundation, three legislators appointed by the chairman of the legislative council, and one member appointed by the economic development association of North Dakota, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 10. LEGISLATIVE INTENT - ECONOMIC DEVELOPMENT FOUNDATION AND STRATEGIC PLAN.

It is the intent of the legislative assembly that up to \$100,000 of the grants line item in section 1 of this Act be allocated for expenses of the economic development foundation and for the development of a strategic plan for economic development in North Dakota for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 11. LEGISLATIVE INTENT - POLITICAL SUBDIVISION GRANTS - EXTRAORDINARY COSTS.

It is the intent of the legislative assembly that \$150,000 of the Lewis and Clark bicentennial line item in section 1 of this Act be allocated for grants to reimburse political subdivisions for extraordinary costs incurred in river rescues directly related to Lewis and Clark bicentennial activities for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 12. LEGISLATIVE INTENT - GRANTS LINE ITEM - REMODELING OF ABANDONED PUBLIC SCHOOL BUILDINGS PILOT PROJECT.

It is the intent of the legislative assembly that \$50,000 of the grants line item in section 1 of this Act be used to establish a pilot project to provide grants to cities, school districts, or authorized job development authorities to assist in the remodeling of abandoned public school buildings to be used for the location or relocation of a new or expanding business. The department may provide a grant only for an approved project. If the applicant provides matching funds of at least twenty percent for the approved project, the department may award a grant of up to five thousand dollars for each new full-time job to be created as a result of the project. The maximum amount of a grant under this section is fifty thousand dollars. The grant funds may be used only to remodel closed public school buildings in a city

in which the closed school was the only school in the city. The department may establish additional guidelines for the awarding of grants under this section. Any funds not obligated under this section on October 1, 2002, may be used for other purposes as determined by the commissioner of the department of commerce.

SECTION 13. LEGISLATIVE INTENT - GRANTS - CHAMPION COMMUNITIES. It is the intent of the legislative assembly that \$75,000 of the grants line item in section 1 of this Act be allocated to provide matching funds on a dollar-for-dollar basis to the United States department of agriculture designated champion/REAP alliance communities to provide funding for an economic development coordinator employed by these communities to assist in economic development and to help stem outmigration, for the biennium beginning July 1, 2001, and ending June 30, 2003. Local matching funds may be cash or in-kind contributions.

SECTION 14. 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, 2001, and ending June 30, 2003.

SECTION 15. WORKFORCE DEVELOPMENT GRANTS - TALENT RECRUITMENT INITIATIVE. The grants line item in section 1 of this Act includes \$250,000 for the development of a public/private partnership statewide talent recruitment initiative for the biennium beginning July 1, 2001, and ending June 30, 2003. The department of commerce and the workforce development council shall establish criteria for the distribution of grants under this section and may require a grant applicant to provide matching funds.

SECTION 16. LEGISLATIVE COUNCIL STUDY - VENTURE CAPITAL. The legislative council shall consider studying, during the 2001-02 interim, the availability of venture capital, tax credits, and other financing and research and development programs for new or expanding businesses. If chosen, the study must include an inventory of the programs available, a review of the difference between public and private venture capital programs, an assessment of the needs of business and industry, the research and development efforts of the North Dakota university system, and a review of the investments of the state investment board and the feasibility and desirability of investing a portion of these funds in North Dakota. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 17. LEGISLATIVE COUNCIL STUDY - GLOBAL MARKETS. The legislative council shall consider studying, during the 2001-02 interim, the feasibility and desirability of expanding North Dakota's economic development marketing efforts to include international markets and establishing a global marketing division within the department of commerce. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 18. AMENDMENT. Section 4-14.1-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-07. Duration and limitation of ethanol plant production incentives. 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 ~~twelve~~ 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 ~~twelve~~ 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 hundred fifty 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 ~~has a production capacity of fifteen million gallons [56781000 liters] or more of ethanol per year is not eligible for production incentives from the state 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 eligible to receive an equal share in up to five hundred thousand dollars in production incentives from the state in a fiscal year.~~

²⁰ **SECTION 19. AMENDMENT.** Section 54-34.4-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.4-04. North Dakota motion picture development office - Advisory board. The North Dakota motion picture development office is a part of the tourism department. The office shall promote North Dakota as a location for shooting films, television shows, documentaries, and commercials, and shall provide technical expertise to persons desiring to use the state as a filming location. The director of the tourism department shall appoint staff necessary to fulfill the functions and duties of the office and ~~shall~~ may appoint an advisory board of no more than ten members to assist in advising the office and to provide technical expertise to offer prospective film companies seeking locations and advice. The board shall serve without compensation, except reimbursement for actual and necessary expenses at the same rate as allowed other state officers to be paid from funds available to the office within the limits of legislative appropriations.

SECTION 20. A new section to chapter 54-34.4 of the North Dakota Century Code is created and enacted as follows:

Copyright and trademark. The director of the tourism department may obtain copyright or trademark protection for anything that may be used to promote the policies listed in section 54-34.4-03. The director may license and charge a fee for photographs and logos and anything with copyright or trademark protection.

SECTION 21. AMENDMENT. Section 57-43.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

²⁰ Section 54-34.4-04 was also amended by section 42 of Senate Bill No. 2032, chapter 488.

57-43.1-03.1. (Effective until December 31, ~~2004~~ 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 in the highway tax distribution fund, and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.

(Effective January 1, ~~2002~~ 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 22. EFFECTIVE DATE. Section 21 of this Act is effective for refund claims for motor vehicle fuel taxes paid after December 31, 2000.

SECTION 23. EMERGENCY. Section 20 of this Act is declared to be an emergency measure.

Approved April 28, 2001
Filed April 28, 2001

CHAPTER 45

SENATE BILL NO. 2020

(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; to provide for a legislative council study; to create and enact a new section to chapter 52-08 of the North Dakota Century Code, relating to workforce training funds; 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 state board for vocational and technical education for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$2,946,750
Operating expenses	596,147
Equipment	60,000
Grants	22,920,288
Information technology technical education program development grants	422,300
Adult farm management	575,760
Work force training	1,350,000
Postsecondary education vocational grants	<u>357,452</u>
Total all funds	\$29,228,697
Less estimated income	<u>14,887,742</u>
Total general fund appropriation	\$14,340,955

SECTION 2. WORKFORCE TRAINING AND DEVELOPMENT ACTIVITIES - DIVISION OF WORKFORCE DEVELOPMENT REPORT TO FIFTY-EIGHTH LEGISLATIVE ASSEMBLY. The division of workforce development of the department of commerce shall prepare a report annually on workforce training and development activities of the North Dakota university system, job service North Dakota, department of human services, state board for vocational and technical education, department of commerce, and other workforce partners. The division of workforce development of the department of commerce shall present the reports to the House and Senate appropriations committees of the fifty-eighth legislative assembly.

SECTION 3. INFORMATION TECHNOLOGY TECHNICAL EDUCATION PROGRAM DEVELOPMENT GRANTS. The state board for vocational and technical education shall use the amount appropriated in the line item entitled information technology technical education program development grants in section 1 of this Act to contract with a nonprofit private entity to provide assistance to schools

in information technology technical education program development. The funds must be expended in accordance with the April 24, 2001, partnership agreement entered into between the state board for vocational and technical education and explornet.

SECTION 4. WORKFORCE TRAINING AND DEVELOPMENT - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2001-02 interim, workforce training and development programs in North Dakota, including efforts to recruit and retain North Dakota's workforce, underemployment and skills shortages, current workforce training efforts, and the involvement of the new economy initiative goals and strategies; and the work force 2000 and new jobs training programs and other workforce training and development programs administered by agencies of the state of North Dakota, and the feasibility and desirability of consolidating in a single agency the funding and administration of those programs. Agencies to be considered as part of the study include job service North Dakota, the department of economic development and finance, the state board for vocational and technical education, and the North Dakota university system. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 5. WORKFORCE TRAINING - REGIONAL FUNDS - REPORT TO BUDGET SECTION. The North Dakota university system shall report during the 2001-02 interim to the budget section of the legislative council regarding the amount of funds raised in each region of the state during the first fiscal year of the biennium and the amount anticipated to be raised prior to June 30, 2003.

SECTION 6. A new section to chapter 52-08 of the North Dakota Century Code is created and enacted as follows:

Workforce training funds - Distribution. Within the limits of legislative appropriations, workforce training funds must be distributed by the state board for vocational and technical education as follows:

1. During the first fiscal year of each biennium, the state board for vocational 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 the state board for vocational 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 and technical education that the institution has met the requirements of this subsection.

SECTION 7. EFFECTIVE DATE. Section 6 of this Act becomes effective July 1, 2003.

Approved May 3, 2001

Filed May 4, 2001

CHAPTER 46

SENATE BILL NO. 2021

(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, and the agricultural experiment station; to provide statements of legislative intent; to provide for a report to the budget section; and to amend and reenact sections 4-05.1-16, 4-05.1-17, 4-05.1-19, and 4-05.1-21 of the North Dakota Century Code, relating to the membership and duties of the state board of agricultural research and education, the compensation of board members, and the agricultural research 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 North Dakota state university extension service, the northern crops institute, the upper great plains transportation institute, and the North Dakota agricultural experiment station for the purpose of defraying the expenses of their various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

Total all funds	\$33,628,046
Less estimated income	<u>19,298,301</u>
Total general fund appropriation	\$14,329,745

Subdivision 2.

NORTHERN CROPS INSTITUTE

Total all funds	\$1,457,123
Less estimated income	<u>732,697</u>
Total general fund appropriation	\$724,426

Subdivision 3.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Salaries and wages	\$4,057,364
Operating expenses	2,418,063
Equipment	263,000
Grants	<u>1,150,000</u>
Total all funds	\$7,888,427
Less estimated income	<u>7,383,348</u>
Total general fund appropriation	\$505,079

Subdivision 4.

MAIN RESEARCH CENTER

Total all funds	\$54,962,097
Less estimated income	<u>26,812,612</u>
Total general fund appropriation	\$28,149,485

Subdivision 5.

RESEARCH CENTERS

Dickinson research center	\$3,577,653
Central grasslands research center	1,413,982
Hettinger research center	1,559,583
Langdon research center	1,916,894
North central research center	1,511,068
Williston research center	1,413,786
Carrington research center	<u>3,259,679</u>
Total all funds	\$14,652,645
Less estimated income	<u>6,618,485</u>
Total general fund appropriation	\$8,034,160

Subdivision 6.

AGRONOMY SEED FARM

Agronomy seed farm	\$1,259,140
Total special funds appropriation	<u>\$1,259,140</u>
Grand total general fund appropriation S.B. 2021	\$51,742,895
Grand total special funds appropriation S.B. 2021	\$62,104,583
Grand total all funds appropriation S.B. 2021	\$113,847,478

SECTION 2. ADDITIONAL INCOME - APPROPRIATION. Any additional income including funds from federal acts, private grants, gifts and donations, or from other sources received by the North Dakota agricultural experiment station, northern crops institute, upper great plains transportation institute, and the North Dakota state university extension service, except as otherwise provided by law, is appropriated for the purpose designated in the act, grant, or donation for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 3. TRANSFER AUTHORITY. Upon approval of the state board of agricultural research and education and appropriate research extension center directors, the director of the North Dakota agricultural experiment station may transfer appropriation authority within subdivisions 4, 5, and 6 of section 1 of this Act and shall notify the office of management and budget within ten days following the transfer.

SECTION 4. LEGISLATIVE INTENT - FULL-TIME EQUIVALENTS. The board of higher education is authorized to adjust or increase full-time equivalent positions as needed, subject to availability of funds. The board shall report any adjustments to the office of management and budget prior to the submission of the 2003-05 budget request.

SECTION 5. LEGISLATIVE INTENT - LANGDON LEARNING CENTER. It is the intent of the legislative assembly that the Langdon research extension center begin construction on the Langdon learning center only when the station has \$500,000 in cash or pledges for the learning center for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 6. LEGISLATIVE INTENT - DICKINSON OIL REVENUE INITIATIVES. It is the intent of the fifty-seventh legislative assembly that \$745,000 of

special funds from Dickinson oil revenues be allocated for the beefline initiative, which includes \$300,000 for a modern feedmill and feedlot at the Carrington research extension center that will address genetic, management, marketing, coproduct and environmental research needs, barley feeding research, and include outside consultation from the beef cattle industry to work with the state board of agricultural research and education to develop a complete research program with goals and priorities. The state board of agricultural research and education and researchers shall cooperatively develop the intent of the beefline initiative before implementation of the program.

SECTION 7. LEGISLATIVE INTENT - MALT BARLEYS. It is the intent of the fifty-seventh legislative assembly that the agricultural experiment station allocate from the main research center \$288,000, or so much of the sum as may be necessary, for the purpose of developing, in conjunction with the research centers, western North Dakota malt barleys.

SECTION 8. LEGISLATIVE INTENT - LIVESTOCK MARKETING CLUBS. It is the intent of the fifty-seventh legislative assembly that the North Dakota state university extension service may allocate resources for the establishment of two pilot livestock marketing clubs in western North Dakota.

SECTION 9. LEGISLATIVE INTENT - LAND PURCHASE. It is the intent of the fifty-seventh legislative assembly that the main research center may enter a financial arrangement with the north central research center to assist with the purchase of land in Ward County, North Dakota.

SECTION 10. REPORT TO THE BUDGET SECTION. The state board of agricultural research and education shall present a status report to the budget section of the legislative council during the biennium beginning July 1, 2001, and ending June 30, 2003. The report must include:

1. The number of employees and expenditures for each research extension center and the main station.
2. The expenditures from all funds for each state board of agricultural research and education gas tax research initiative.
3. A statement for each agricultural experiment station research project indicating the economic impact of each project to the state of North Dakota and how the project relates to the vision statement "North Dakota is to become the trusted provider of the highest quality agricultural products in the world," and a statement regarding North Dakota state university extension service's dissemination of information regarding each agricultural experiment station research project.
4. A report on cooperative projects undertaken by the agricultural research center, extension centers, and the main station.
5. A report identifying the source of income at the research and extension centers, the use of those funds, and the extent the research projects are affected by each income source.

SECTION 11. 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 during the biennium beginning July 1, 2003, and ending June 30, 2005.

²¹ **SECTION 12. AMENDMENT.** Section 4-05.1-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-16. State board of agricultural research and education - Membership - Terms.

1. The state board of agricultural research and education consists of:
 - a. The president of North Dakota state university or the president's designee;
 - b. The vice president of agricultural affairs at North Dakota state university, who serves in an ex officio nonvoting capacity;
 - c. The administrator of the agricultural experiment station, who serves in an ex officio nonvoting capacity;
 - d. The five persons appointed to the agricultural consultation board by the ag coalition and serving in that capacity on July 1, 1997;
 - e. The five persons appointed to the agricultural consultation board by the extension service's multicounty program units and serving in that capacity on July 1, 1997;
 - f. The two persons appointed to the agricultural consultation board by the president of North Dakota state university as representatives of the state's research extension centers and serving in that capacity on July 1, 1997;
 - g. The agriculture commissioner, who serves in an ex officio nonvoting capacity; ~~and~~
 - h. The director of the North Dakota state university extension service, who serves in an ex officio nonvoting capacity; and
 - i. Two members of the legislative assembly appointed by the chairman of the legislative council. The chairman shall appoint one member from each political faction. The terms of members are for two years, and members may be reappointed. The legislative council shall pay the compensation and expense reimbursement for the legislative members.
2. a. The initial five members appointed by the ag coalition shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.

²¹ Section 4-05.1-16 was also amended by section 1 of House Bill No. 1181, chapter 58.

- b. The initial five members appointed by the extension service's multicounty program units shall select their terms by lot so that one member serves for one year, one member serves for two years, one member serves for three years, one member serves for four years, and one member serves for five years.
 - c. The two persons appointed as representatives of the state's research extension centers shall serve only through June 30, 1998.
 3. At the completion of each initial term, the term of office for each member is five years, beginning on July first. No person may be appointed to a second five-year term.
 4.
 - a. At least ninety days before the conclusion of the initial term of each member appointed by the ag coalition, the ag coalition shall provide to the state board of higher education a list of one or more names from which the state board of higher education shall appoint a successor. Future appointments to these five positions must be made in the same manner. The state board of higher education shall ensure that four out of the five seats are held by agricultural producers.
 - b. At least ninety days before the conclusion of the initial term of each member appointed by the extension service's multicounty program units, the units through their advisory groups shall provide to the state board of higher education a list of one or more names from which the state board of higher education shall appoint a successor. Future appointments to these five positions must be made in the same manner. The state board of higher education shall ensure that four out of the five seats are held by agricultural producers.

SECTION 13. AMENDMENT. Section 4-05.1-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-17. Compensation of board members - Expenses. Each appointed member of the state board of agricultural research and education is entitled to receive ~~sixty-two~~ seventy-five dollars ~~and fifty cents~~ per day as compensation for the time actually spent devoted to the duties of office and is entitled to receive necessary expenses in the same manner and amounts as state officials for attending meetings and performing other functions of office.

²² **SECTION 14. AMENDMENT.** Section 4-05.1-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-19. State board of agricultural research and education - Duties. Within the policies of the state board of higher education, the state board of agricultural research and education is responsible for ~~the~~ budgeting; ~~supervision;~~ and policymaking ~~responsibilities~~ associated with the ~~supervision of the~~ agricultural

²² Section 4-05.1-19 was also amended by section 2 of House Bill No. 1181, chapter 58.

experiment station and the North Dakota state university extension service. The board of agricultural research and education board shall:

1. Determine the causes of any adverse economic impacts on crops and livestock produced in this state;
2. Develop ongoing strategies for the provision of research solutions and resources to negate adverse economic impacts on crops and livestock produced in this state;
3. ~~Make available financial resources, including grants and salaries, and make available equipment and facilities to implement~~ Develop ongoing strategies for the dissemination of research information through the extension service;
4. ~~Implement~~ the strategies developed under ~~subsection~~ subsections 2 and 3, subject to approval by the state board of higher education;
4. ~~5.~~ Develop an annual budget for the operation of, with the agricultural experiment station and the North Dakota state university extension service, an annual budget for the operations of these entities;
5. ~~6.~~ Develop a biennial budget request and submit that request to the president of North Dakota state university and the state board of higher education on or before March first of each even-numbered year;
6. ~~7.~~ Maximize the use of existing financial resources, equipment, and facilities to generate the greatest economic benefit from research and extension efforts and to promote efficiency;
7. ~~8.~~ Annually evaluate the results of research and extension activities and expenditures and report the findings to the legislative council and the state board of higher education;
8. ~~9.~~ Advise the ~~administration~~ president of North Dakota state university regarding the recruitment ~~and~~, selection, and performance of the vice president of agricultural affairs, the extension service director, and the station director; and
9. ~~10.~~ Develop ongoing strategies for the dissemination of research information and the best practices for management of the extension service Present a status report to the budget section of the legislative council.

²³ **SECTION 15. AMENDMENT.** Section 4-05.1-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-21. State board of agricultural research and education - Apportionment of research funds.

²³ Section 4-05.1-21 was also amended by section 4 of House Bill No. 1181, chapter 58.

1. The state board of agricultural research and education may use up to ten percent of the proceeds of the agricultural research fund, not to exceed fifty thousand dollars, for administrative expenses and annually shall apportion the remaining proceeds of the agricultural research fund as follows:
 - a. Seventy percent to research activities affecting North Dakota agricultural commodities that account for at least two percent of the gross sales of all agricultural commodities grown or produced in the state. The percentage of the dollars available for each agricultural commodity under this section may not exceed the percentage that the gross sales of the agricultural commodity bear to the North Dakota gross sales of all agricultural commodities grown or produced during the previous year, as determined by the agricultural statistics service;
 - b. Eighteen percent to research activities affecting North Dakota animal agriculture; and
 - c. Twelve percent to research activities affecting new and emerging crops in North Dakota.
2. The state board of agricultural research and education shall solicit proposals for research from the public and private sectors and shall appoint committees to review the proposals and award the agricultural research grants on a competitive basis. Each committee must consist of a majority of agricultural producers selected in consultation with the agricultural commodity groups representing commodities that are the subjects of the proposed research and may include researchers and other individuals knowledgeable about the proposed area of research. Whenever possible, the committees shall require that a grant recipient commit matching funds.
3. The state board of agricultural research and education shall develop policies regarding the award of research grants, including requirements for matching funds, cooperation with other in-state and out-of-state researchers, and coordination with other in-state and out-of-state proposed or ongoing research projects.

SECTION 16. TRANSFER AUTHORITY. Upon approval from the state board of agricultural research and education, the director of the North Dakota agricultural experiment station may transfer appropriation authority within subdivisions 1, 4, and 5 of section 1 of this Act of up to \$90,000 of estimated income for beef quality assurance and up to \$60,000 of estimated income for applied research initiatives, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 28, 2001
Filed April 28, 2001

CHAPTER 47**SENATE BILL NO. 2022**

(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.

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, 2001, and ending June 30, 2003, as follows:

Salaries and wages	\$25,576,531
Operating expenses	35,661,772
Equipment	5,080,000
Center for innovation and instruction	800,334
Education technology commission grants	1,200,000
SENDIT network	1,673,669
Wide area network	9,968,905
Enterprise resource planning system	7,500,000
Geographic information system	750,000
Prairie public broadcasting	1,407,513
Total all funds	\$89,618,724
Less estimated income	70,838,880
Total general fund appropriation	\$18,779,844

SECTION 2. TRANSFERS - LIMITATIONS. 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 in section 1 of this Act for the information technology department as may be requested by the chief information officer. Transfers that increase line items in excess of the amount included in the executive recommendation presented on January 7, 2001, may only be made after emergency commission and budget section approval. The chief information officer shall inform the budget section of transfers made pursuant to this section.

Approved April 28, 2001
Filed April 28, 2001

CHAPTER 48

SENATE BILL NO. 2023

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

CAPITAL IMPROVEMENTS

AN ACT to provide an appropriation for capital projects of various state departments and institutions; to provide an appropriation for state facility energy improvement capital projects of various state departments and institutions; to authorize the industrial commission and the state board of higher education to issue and sell bonds for capital projects; to provide an appropriation; to provide a statement of legislative intent; 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, 2001, and ending June 30, 2003. The proceeds of the evidences of indebtedness and other available funds are hereby appropriated during the biennium beginning July 1, 2001, and ending June 30, 2003, for the following projects:

State department of health	Laboratory addition	\$2,700,000
Minot state university	Old main renovation	7,850,000
Job service North Dakota	Bismarck service delivery office	2,302,000

The industrial commission shall issue evidences of indebtedness under this section with the condition that lease rental payments need not begin until July 1, 2003. This authority of the industrial commission to issue evidences of indebtedness ends June 30, 2003, 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	\$12,852,000
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SECTION 2. BOND ISSUANCE REPAYMENT RESPONSIBILITY. Of the total amount of evidences of indebtedness issued under the provisions of section 1 of this Act, a total of \$6,356,000 must be available from nongeneral 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:

State department of health	\$1,755,000
Job service North Dakota	2,302,000
Minot state university	2,299,000

The Minot state university local responsibility of \$2,299,000 must be paid in ten annual payments with each of the first two annual payments being \$315,000 and each of the remaining eight annual payments being \$208,625.

SECTION 3. 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 the report filed by the division of community services of the office of management and budget with the governor, dated August 30, 2000, and which are hereby 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, during the biennium beginning July 1, 2001, and ending June 30, 2003. The proceeds of the evidences of indebtedness and other available funds are hereby appropriated during the biennium beginning July 1, 2001, and ending June 30, 2003, for the following projects:

Department of transportation	Headquarters building	\$352,600
North Dakota state university	Sundry projects	296,348
University of North Dakota	Sundry projects	3,990,785

The authority of the industrial commission to issue evidences of indebtedness under this section ends June 30, 2003, 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.

Grand total special funds appropriation	\$4,639,733
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SECTION 4. LOCAL RESPONSIBILITY - APPROPRIATION. There is appropriated from local or other funds, the sum of \$1,300,000 to the state college of science for the purpose of providing the required local match for the student union renovation and expansion project, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 5. BOND ISSUANCE - PURPOSES - APPROPRIATION. The state board of higher education, in accordance with chapter 15-55, may issue and sell self-liquidating, tax-exempt bonds in an amount not exceeding \$17,500,000. Bonds issued pursuant to this section are not a general obligation of the state of North Dakota. The bonds may be issued, and the proceeds are appropriated, for the biennium beginning July 1, 2001, and ending June 30, 2003, for the purpose of financing the following capital projects:

University of North Dakota - Memorial student union renovation	\$3,500,000
North Dakota state university - Residence hall construction	8,000,000
North Dakota state university - Minard hall renovation	3,000,000
North Dakota state college of science - Student union renovation and expansion	2,000,000
North Dakota state college of science - Parking lot improvements	1,000,000

Any unexpended balance resulting from the proceeds of the bonds must be placed in a sinking fund to be used for the retirement of the bonds.

SECTION 6. LEGISLATIVE INTENT - STATE COLLEGE OF SCIENCE - STUDENT UNION RENOVATION AND EXPANSION. It is the intent of the fifty-seventh legislative assembly that the state college of science local responsibility of \$1,300,000, as provided in section 4 of this Act, must be collected before the state college of science may begin on the renovation and expansion of the student union.

SECTION 7. STATE FACILITY ENERGY IMPROVEMENT PROJECT - REPORT TO THE FIFTY-EIGHTH LEGISLATIVE ASSEMBLY. The agencies and

institutions receiving authorization for energy improvement projects pursuant to section 3 of this Act shall monitor the resulting energy savings and the cost-effectiveness of the projects and shall report the results to the house and senate appropriations committees of the fifty-eighth legislative assembly.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 26, 2001

Filed April 26, 2001

CHAPTER 49**HOUSE BILL NO. 1215**

(Representatives DeKrey, N. Johnson, Metcalf, Nelson)
(Senators Heitkamp, Lyson)

ARMORY MAINTENANCE AND REPAIR

AN ACT to provide an appropriation to the adjutant general's office for maintenance and repair of political subdivision-owned armories and to provide a report to the budget section.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION AND BUDGET SECTION REPORT. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, to the adjutant general's office for the purpose of distributing on an equal matching fund basis grants of up to \$25,000 per political subdivision for the maintenance and repair of political subdivision-owned armories, for the biennium beginning July 1, 2001, and ending June 30, 2003. Projects must be approved and funds distributed based on rules promulgated by the adjutant general. Priority must be given to those major maintenance and repair projects for which the local political subdivision contributes the highest ratio of political subdivision funds for each dollar of state funds requested. Before approval of any project by the adjutant general under the matching grant program, the adjutant general shall conduct a major repair and maintenance needs survey of all political subdivision-owned armories and provide a written report of the survey results and project recommendations for the biennium to the budget section of the legislative council. A political subdivision receiving a grant shall manage the maintenance or repair project.

Approved April 13, 2001

Filed April 13, 2001

CHAPTER 50**HOUSE BILL NO. 1249**

(Representatives Boehm, Berg, Froelich)
(Senators Solberg, Tomac)

JOHNE'S DISEASE CONTROL

AN ACT to provide an appropriation to the state board of animal health for the purpose of defraying the expenses associated with the control of Johne's disease in North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION - REFUND FUND TRANSFER. The funds provided in this section, or so much of the funds as may be necessary, are hereby appropriated out of any moneys in the attorney general refund fund from lawsuit settlement collections in the state treasury, not otherwise appropriated, to the state board of animal health to disburse to livestock producers participating in the North Dakota voluntary Johne's disease herd status program to defray expenses incurred in the testing and control of Johne's disease in livestock and to provide for the education of producers and veterinarians concerning the testing and control of Johne's disease for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Testing assistance	\$105,000
Technical assistance	52,500
Education	<u>20,000</u>
Total special funds appropriation	\$177,500

The funds appropriated from the attorney general refund fund must be transferred to the department of agriculture operating fund as requested by the state veterinarian.

Approved April 13, 2001
Filed April 16, 2001

CHAPTER 51**SENATE BILL NO. 2229**
(Senators Robinson, Nething)
(Representatives R. Kelsch, Timm)**VETERANS' CEMETERY**

AN ACT to provide an appropriation to the adjutant general for the operation of the North Dakota veterans' cemetery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the adjutant general for the purpose of operating the North Dakota veterans' cemetery, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 28, 2001
Filed April 28, 2001

CHAPTER 52**SENATE BILL NO. 2342**

(Senators Thane, Bercier, Mutch)
(Representatives Carlisle, Maragos, B. Thoreson)

NATIONAL WORLD WAR II MEMORIAL

AN ACT to provide an appropriation to the national World War II memorial in Washington, District of Columbia.

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 \$53,210, or so much of the sum as may be necessary, to the governor for the purpose of participating in the construction of the national World War II memorial in Washington, District of Columbia, by providing this state's share of the monument which represents a payment of one dollar for each person from this state who served in World War II, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 53**HOUSE BILL NO. 1467**

(Representatives D. Johnson, Brandenburg, Nelson)
(Senators Christmann, Klein)

**ENVIRONMENT AND RANGELAND PROTECTION
FUND TRANSFER**

AN ACT to transfer funds from the environment and rangeland protection fund to the minor use pesticide fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. TRANSFER. The office of management and budget shall transfer \$500,000, or so much of the sum as may be available, from the environment and rangeland protection fund to the minor use pesticide fund during the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 54**SENATE BILL NO. 2195**

(Senators Bowman, Nething, Tomac)
(Representatives Boucher, Carlisle, Timm)

COWBOY HALL OF FAME GRANT

AN ACT to provide legislative intent relating to the appropriation for the tourism division of the department of commerce and funding for a grant to the North Dakota cowboy hall of fame.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE INTENT - GRANT TO NORTH DAKOTA COWBOY HALL OF FAME. The grants line item appropriated to the tourism division of the department of commerce in Senate Bill No. 2019 includes the sum of \$100,000, or so much of the sum as may be necessary, for the purpose of providing a grant to the North Dakota cowboy hall of fame for defraying capital construction costs, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 9, 2001
Filed April 10, 2001

GENERAL PROVISIONS

CHAPTER 55

HOUSE BILL NO. 1049

(Legislative Council)
(Judiciary Committee)

TECHNICAL CORRECTIONS ACT

AN ACT to amend and reenact sections 1-08-12, 4-30-03.9, 6-09.6-01.1, 6-09.6-01.2, 10-19.1-05, 15-18-06, 19-03.1-30, and 26.1-26-11, subsection 6 of section 27-20-02, subsection 1 of section 38-08-09.4, subsection 5 of section 40-47-01.1, subsections 1 and 7 of section 40-63-01, sections 40-63-02, 40-63-03, 40-63-09, 42-04-01, 45-22-15, subsection 13 of section 49-21-01, subdivision a of subsection 9 of section 51-25-01, subdivision c of subsection 2 of section 52-06-06.1, subsection 9 of section 54-40.1-02, and sections 54-44.3-12.2, 57-38-71, 57-38-72, 57-38-73, 57-38-74, 57-39.3-02, 57-40.3-11, and 62.1-02-01 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references; and to repeal chapter 38-18.2 of the North Dakota Century Code, relating to obsolete provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-08-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1-08-12. Alternative methods of signing, subscribing, or verifying documents filed by electronic means. A state agency, as defined in section ~~32-12.1-02~~ 44-08-04.2, charged by law with the duty of receiving signed, subscribed, or verified documents may accept such documents filed by electronic means, including telecommunications. The secretary of state shall adopt rules in the manner provided in chapter 28-32 to govern methods for signing, subscribing, or verifying documents filed by electronic means, except documents filed with the tax commissioner. A signature on a document filed by electronic means which is accepted by the state agency and complies with the rules of the secretary of state has the same validity and consequence as the actual signature and written declaration for a paper document.

SECTION 2. AMENDMENT. Section 4-30-03.9 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-03.9. Entry, inspection, and investigation. Authorized representatives of the department may enter, at reasonable hours, places of business where a licensee or license applicant maintains books, papers, accounts, records, or other documents related to the production, storage, processing, manufacturing, or sale of dairy products. The commissioner may subpoena, and the commissioner's authorized representative may inspect, audit, and make copies of relevant books, papers, records, accounts, or other documents of persons doing business with licensees. Any information gained by the department or by the

commissioner under this section is confidential and may be used only for the administration of this chapter, but the department or the commissioner may divulge the information when testifying in any departmental administrative hearing, in a duly noticed proceeding before the milk ~~stabilization~~ marketing board, or in any court proceeding in which the department or the commissioner is a party. This chapter does not prevent the use of information procured by the department or the commissioner in the compiling or dissemination of general statistical data containing information procured from a number of licensees and compiled in a manner so as not to reveal individual information for any licensee or license applicant.

The commissioner may also subpoena and take the testimony under oath of persons believed by the commissioner to have information needed by the commissioner in administering and enforcing this chapter.

SECTION 3. AMENDMENT. Section 6-09.6-01.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.6-01.1. Developmentally disabled facility loan fund program no. 2.

There is hereby created a developmentally disabled facility loan fund program no. 2 for the purpose of making loans to nonprofit corporations, organized in the localities in which facilities are proposed to be located, for project costs, including the cost of real estate, construction, reconstruction, acquisition, furnishings, and equipment, and administrative costs related to the establishment thereof, of facilities for developmentally disabled, chronically mentally ill, and physically disabled persons. The loan fund may borrow an amount not to exceed five million dollars from the common ~~school~~ schools trust fund to finance the program. The loan must be repaid from any moneys in the lands and minerals trust fund not otherwise appropriated. Any interest earned by the loan fund before loans are made must be credited by the Bank to the lands and minerals trust fund. The loan fund program must be administered by the Bank of North Dakota in the same manner the Bank administers the program established by sections 6-09.6-01 and 6-09.6-02 through 6-09.6-05, except that all payments of principal and interest must be credited by the Bank to the lands and minerals trust fund after the Bank has deducted a service fee for administering the program equivalent to an annual fee of one-half of one percent of the principal balance of the outstanding loans.

SECTION 4. AMENDMENT. Section 6-09.6-01.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.6-01.2. Developmentally disabled facility loan fund program no. 3.

There is hereby created a developmentally disabled facility loan fund program no. 3 for the purpose of making loans to nonprofit corporations, organized in the localities in which facilities are proposed to be located, for project costs, including the cost of real estate, construction, reconstruction, acquisition, furnishings, and equipment, and administrative costs related to the establishment thereof, of facilities for developmentally disabled, chronically mentally ill, and physically disabled persons. The loan fund may borrow an amount not to exceed four million nine hundred fifty-one thousand one hundred forty-five dollars from the common ~~school~~ schools trust fund to finance the program. The loan fund program shall be administered by the Bank of North Dakota in the same manner the Bank administers the program established by sections 6-09.6-01 and 6-09.6-02 through 6-09.6-05, except that all payments of principal and interest must be credited by the Bank to the lands and minerals trust fund after the Bank has deducted a service fee for administering the program equivalent to an annual fee of one-half of one percent of the principal balance of the outstanding loans.

SECTION 5. AMENDMENT. Section 10-19.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-05. Retention of two-thirds majority.

1. If the articles of a corporation described in section 10-19.1-02 ~~or 10-19.1-03~~ do not contain a provision specifying the proportion of the voting power of the shares required for approval of amendments to the articles, plans of merger or exchange, or sales of assets, a shareholder or shareholders holding more than one-third of the voting power of all the shares entitled to vote for any or all of the above-mentioned actions, by signed written demand filed in duplicate original with the secretary of state, along with the fees provided in section 10-19.1-147, may amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of the shares entitled to vote for any or all of the above-mentioned actions for which no required majority was specified, notwithstanding any provisions of section 10-19.1-19, 10-19.1-98, or 10-19.1-104 to the contrary. Notice that the demand has been filed must be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.
2. A shareholder or shareholders holding more than one-third of the voting power of the shares entitled to vote for dissolution of a corporation described in section 10-19.1-02 ~~or 10-19.1-03~~, by signed written demand filed in duplicate original with the secretary of state, along with the fees provided in section 10-19.1-147, may amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of all the shares for the authorization of the dissolution of the corporation, notwithstanding the provisions of section 10-19.1-107. Notice that the demand was filed must be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.
3. A signed written demand by the shareholders of a corporation pursuant to subsection 1 or 2 is valid only if filed with the secretary of state before July 1, 1986.

SECTION 6. AMENDMENT. Section 15-18-06 of the North Dakota Century Code is amended and reenacted as follows:

15-18-06. Proceeds of levy to be certified to special school district. The proceeds of any tax levy hereby authorized must be certified quarterly to the clerk of any special school district which maintained a junior college or off-campus educational center pursuant to this chapter as it existed on June 30, 1984. The proceeds must be placed in a special junior college fund or an off-campus center fund and must be used to finance any residual or other fiscal obligations of the special school district under the terms of an agreement between the district and the state board of higher education ~~pursuant to section 15-10-01.1.~~

SECTION 7. AMENDMENT. Section 19-03.1-30 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-30. Conditional discharge for possession as first offense. Whenever any person who has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state relating to

narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled substance under subsection ~~3~~ 6 of section 19-03.1-23, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the person on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section is without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the extended sentence which may be imposed under section 12.1-32-09, except those disqualifications or disabilities pertaining to the possession of firearms imposed by section 62.1-02-01. There may be only one discharge and dismissal under this section with respect to any person.

²⁴ **SECTION 8. AMENDMENT.** Section 26.1-26-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-11. License of agent or broker - Lines of insurance. An insurance agent, insurance broker, or surplus lines insurance broker may receive a license to market products under one or more of the following lines:

1. Life and annuity means insurance coverage on human lives including benefits of endowment, annuities, and credit life.
2. Accident and health means insurance coverage for sickness, disease, injury, accidental death, and disability.
3. Property means insurance coverage for direct and consequential loss of or damage to property of every kind.
4. Casualty means insurance coverage against legal liability including that for death, injury, or disability or damage to real or personal property.
5. Variable life and annuity means insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity that reflects the investment experience of a separate account.

The product types found under each of the above lines of insurance are those adopted pursuant to section ~~26.1-15-02.1~~ 26.1-05-02.1.

²⁵ **SECTION 9. AMENDMENT.** Subsection 6 of section 27-20-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state

²⁴ Section 26.1-26-11 was also amended by section 59 of Senate Bill No. 2144, chapter 262.

²⁵ Section 27-20-02 was also amended by section 1 of House Bill No. 1358, chapter 288, and section 2 of Senate Bill No. 2116, chapter 136.

if the act occurred in that state, or under federal law, and the crime does not fall under subdivision c of subsection ~~46~~ 17 and is not a traffic offense as defined in subsection ~~45~~ 16.

²⁶ **SECTION 10. AMENDMENT.** Subsection 1 of section 38-08-09.4 of the North Dakota Century Code is amended and reenacted as follows:

1. The efficient unitized management or control of the further development and operation of the unit area for the recovery of oil and gas from the common source of supply affected. Under such a plan, the actual operations within the unit area may be carried on in whole or in part by the unit itself, or by one or more of the lessees within the unit area as unit operator subject to the supervision and direction of the unit, dependent upon what is most beneficial or expedient. The designation of the unit ~~operation~~ operator must be by a vote of the working interest owners in the unit in a manner provided by the plan of unitization and not by the commission, and the unit operating agreement must contain a provision that the owners of a simple majority of the working interest in the unit area may vote to change the unit operator.

SECTION 11. AMENDMENT. Subsection 5 of section 40-47-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. If the mediation committee is unable to resolve the dispute to the satisfaction of the governing bodies of all the cities involved, the governing body of any of the cities may petition the office of administrative hearings to appoint an administrative law judge to determine the extraterritorial zoning authority of the cities in the disputed area. A hearing may not be held until after at least two weeks' written notice has been given to the governing bodies of the cities involved in the dispute. At the hearing, the governor's appointee who mediated the meetings under subsection ~~3~~ 4 shall provide information to the administrative law judge on the dispute between the cities involved and any proposed resolutions or recommendations made by a majority of the committee members. Any resident of, or person owning property in, a city involved in the dispute or the unincorporated territory that is the subject of the proposed extraterritorial zoning, a representative of such a resident or property owner, and any representative of a city involved, may appear at the hearing and present evidence on any matter to be determined by the administrative law judge. A decision by the administrative law judge is binding upon all the cities involved in the dispute and remains effective until the governing bodies of the cities agree to a change in the zoning authority of the cities. The governing body of a city may request a review of a decision of an administrative law judge due to changed circumstances at any time ten years after the decision has become final. An administrative law judge shall consider the following factors in making a decision under this subsection:

²⁶ Section 38-08-09.4 was also amended by section 1 of Senate Bill No. 2120, chapter 326.

- a. The proportional extraterritorial zoning authority of the cities involved in the dispute;
- b. The proximity of the land in dispute to the corporate limits of each city involved;
- c. The proximity of the land in dispute to developed property in the cities involved;
- d. Whether any of the cities has exercised extraterritorial zoning authority over the disputed land;
- e. Whether natural boundaries such as rivers, lakes, highways, or other physical characteristics affecting the land are present;
- f. The growth pattern of the cities involved in the dispute; and
- g. Any other factor determined to be relevant by the administrative law judge.

²⁷ **SECTION 12. AMENDMENT.** Subsections 1 and 7 of section 40-63-01 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. "Boundary" means the boundary established by vote of the city governing body and approved by the ~~office of intergovernmental assistance~~ division of community services.
7. "Zone" means a renaissance zone proposed by a city and designated by the ~~office of intergovernmental assistance~~ division of community services.

²⁸ **SECTION 13. AMENDMENT.** Section 40-63-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-63-02. Eligibility - Local zone authority designation. Any incorporated city may apply to the ~~office of intergovernmental assistance~~ division of community services to designate a portion of the city as a renaissance zone. Any individual, partnership, limited partnership, limited liability company, trust, or corporation may apply for a tax credit or exemption under sections 40-63-04 through 40-63-07. The governing body of a city may designate a local zone authority to implement a development plan on behalf of the city.

²⁹ **SECTION 14. AMENDMENT.** Section 40-63-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

²⁷ Section 40-63-01 was also amended by section 1 of Senate Bill No. 2033, chapter 359.

²⁸ Section 40-63-02 was also amended by section 2 of Senate Bill No. 2033, chapter 359.

²⁹ Section 40-63-03 was also amended by section 3 of Senate Bill No. 2033, chapter 359.

40-63-03. Renaissance zones.

1. A city may apply to the ~~office of intergovernmental assistance~~ division of community services to designate a portion of that city as a renaissance zone if the following criteria are met:
 - a. The geographic area proposed for the renaissance zone is located wholly within the boundaries of the city submitting the application.
 - b. The application includes a development plan.
 - c. The proposed renaissance zone is not more than twenty square blocks.
 - d. The proposed renaissance zone has a continuous boundary and all blocks are contiguous.
 - e. The proposed land usage includes both commercial and residential property.
 - f. The application includes the proposed duration of renaissance zone status, not to exceed fifteen years.
2. The ~~office of intergovernmental assistance~~ division of community services shall:
 - a. Review all applications for renaissance zone designation against the criteria established in this section and designate zones.
 - b. Approve or reject the duration of renaissance zone status as submitted in an application.
 - c. Approve or reject the geographic boundaries and total area of the renaissance zone as submitted in an application.
 - d. Promote the renaissance zone program.
 - e. Monitor the progress of the designated renaissance zones against submitted plans in an annual plan review.
 - f. Report on renaissance zone progress to the governor and the legislative council on an annual basis until all designated zones expire.
3. The ~~office of intergovernmental assistance~~ division of community services shall consider the following criteria in designating a renaissance zone:
 - a. The viability of the development plan.
 - b. The incorporation and enhancement of unique natural and historic features into the development plan.
 - c. Whether the development plan is creative and innovative in comparison to other applications.

- d. Public and private commitment to and other resources available for the proposed renaissance zone, including the provisions for a renaissance fund corporation.
 - e. How renaissance zone designation would relate to a broader plan for the community as a whole.
 - f. How the local regulatory burden, in particular that burden associated with the renovation of historic properties and that burden associated with mixed use development, will be eased for developers and investors in the renaissance zone.
 - g. The strategies for the promotion, development, and management of the zone, including the use of a local zone authority if designated.
 - h. Any other information required by the ~~office~~ division.
4. The ~~office of intergovernmental assistance~~ division of community services may not designate a portion of a city as a renaissance zone unless, as a part of the application, the city provides a resolution from the governing body of the city that states if the renaissance zone designation is granted, persons and property within the renaissance zone are exempt from taxes as provided in sections 40-63-04 through 40-63-07.
 5. A city may not propose or be part of more than one renaissance zone.
 6. A parcel of property may be exempted from property taxes under section 40-63-05 only once, but during the five taxable years of eligibility for that exemption, the property tax exemption transfers with the transfer of the property to a qualifying user. The ownership or lease of, or investment in, a parcel of property may qualify for exemption or credit under section 40-63-04 only once, but during the five taxable years of eligibility for that exemption or credit, the exemption or credit under section 40-63-04 transfers with the transfer of the property to a qualified user and with respect to the year in which the transfer is made must be prorated for use of the property during that year.

³⁰ **SECTION 15. AMENDMENT.** Section 40-63-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-63-09. Rules and administration - Income tax secrecy exception. The tax commissioner shall administer this chapter with respect to an income tax exemption or credit and has the same powers as provided under section 57-38-56 for purposes of this chapter. The ~~office of intergovernmental assistance~~ division of community services, in cooperation with the tax commissioner, shall issue forms to a taxpayer who may be eligible for the income tax exemption or tax credit sufficient for the tax commissioner to monitor the use of any exemptions or credits received by a taxpayer. The secrecy provisions of section 57-38-57 do not apply to exemptions or

³⁰ Section 40-63-09 was also amended by section 8 of Senate Bill No. 2033, chapter 359.

credits received by taxpayers under sections 40-63-04, 40-63-06, and 40-63-07, but only when a local zone authority inquires of the tax commissioner about exemptions or credits claimed under sections 40-63-04, 40-63-06, and 40-63-07 with regard to that local zone authority or to the extent necessary for the tax commissioner to administer the tax exemptions or credits.

SECTION 16. AMENDMENT. Section 42-04-01 of the North Dakota Century Code is amended and reenacted as follows:

42-04-01. Agricultural operation defined. As used in this chapter, "agricultural operation" means the science and art of production of plants and animals useful to people, by a corporation or a limited liability company as allowed under chapter 10-06.1, or by a corporation or limited liability company, a partnership, or a proprietorship, and including, to a variable extent, the preparation of these products for people's use and their disposal by marketing or otherwise, and includes horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, and any and all forms of farm products, and farm production.

SECTION 17. AMENDMENT. Section 45-22-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-15. Limited liability after dissolution. With respect to limited liability after dissolution:

1. Subject to section 45-22-14, the limited liability shield described in sections ~~45-22-08~~ 45-22-08.1 and 45-22-09 continues in full force for the dissolved domestic limited liability partnership regardless of any dissolution, winding up, and termination.
2. If a domestic limited liability partnership dissolves and the domestic limited liability partnership's business is continued by a successor partnership under section 45-20-02, the limited liability described in section ~~45-22-08~~ 45-22-08.1 also applies to that successor domestic limited liability partnership until the withdrawal of the registration that the dissolved domestic limited liability partnership had in effect under section 45-22-03 at the moment of dissolution. The successor partnership may at any time file the partnership's own registration under section 45-22-03.

SECTION 18. AMENDMENT. Subsection 13 of section 49-21-01 of the North Dakota Century Code is amended and reenacted as follows:

13. "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection ~~3~~ 5 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. Installation of service connections in addition or supplementary to that described in subdivision g of subsection § 5 which also provides transmission service between the end user's premises and the local exchange central office switch;
- f. Mobile telecommunications services using radio spectrum or cellular technology; and
- g. Packet-switched services.

SECTION 19. AMENDMENT. Subdivision a of subsection 9 of section 51-25-01 of the North Dakota Century Code is amended and reenacted as follows:

- a. Manufactures cigarettes anywhere that the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where the importer is an original participating manufacturer, as that term is defined in the master settlement agreement, which will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection ll(mm) of the master settlement agreement and which pays the taxes specified in subsection ll(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise the cigarettes in the United States);

SECTION 20. AMENDMENT. Subdivision c of subsection 2 of section 52-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

- c. Any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in section ~~462(e)~~ 459(i)(5) of the Social Security Act [42 U.S.C. ~~662(e)~~ 659(i)(5)], properly served upon the bureau.

SECTION 21. AMENDMENT. Subsection 9 of section 54-40.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. "Regional council" means the council for comprehensive planning and development established in each region pursuant to ~~section 54-40-08~~ this chapter.

SECTION 22. AMENDMENT. Section 54-44.3-12.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.3-12.2. Employee complaints - Cooperation in development and implementation of basic agency grievance procedures and a statewide appeal mechanism - Appeals. It is the intent of the state of North Dakota to assure fair and equitable treatment and promote harmony between and among all classified

employees. To ensure this the state desires to resolve bona fide employee complaints as quickly as possible. The division shall cooperate with and assist the various departments, agencies, and institutions of the state in the development and implementation of basic agency grievance procedures and a statewide appeal mechanism. The division shall certify appeals from nonprobationary employees in the classified service which are related to discrimination, merit system qualification, reprisals, reduction in force, forced relocation, demotion with loss of pay, suspension without pay, and dismissal, and from applicants for positions in the classified service related to discrimination. Upon receipt of an appeal, the division shall submit a written request to the director of the office of administrative hearings to designate an administrative hearing officer for the division to conduct the hearing and related proceedings, including receiving evidence and preparing findings of fact, conclusions of law, and issuing a final decision. The moving party in the initial action bears the burden of proof in the appeal. An appeal to the district court from the determination of the administrative hearing officer must be filed according to chapter 28-32, but neither the division nor the office of administrative hearings may be named as a party to the appeal under chapter ~~23-32~~ 28-32 unless an employee of one of those two agencies is involved in the grievance.

SECTION 23. AMENDMENT. Section 57-38-71 of the North Dakota Century Code is amended and reenacted as follows:

57-38-71. Definitions applicable to sections 57-38-71 through 57-38-74. As used in sections 57-38-71 through 57-38-74, unless the context otherwise requires:

1. "Beginning ~~businessman~~ entrepreneur", excluding beginning farmers as defined in subdivision m of subsection 1 of section 57-38-01.2, means any person who:
 - a. Is a resident of this state.
 - b. Receives more than one-half of that person's gross annual income from a revenue-producing enterprise, unless the person initially commences business during the tax year for which a deduction will be claimed under sections 57-38-71 through 57-38-74.
 - c. Intends to use any revenue-producing enterprise purchased or rented for business purposes.
 - d. Has had adequate training, by experience or education, in the type of revenue-producing enterprise which that person wishes to begin.
 - e. Has, including the net worth of that person's dependents and spouse, if any, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.
2. "~~Businessman~~ Entrepreneur" means any person owning a revenue-producing enterprise in North Dakota, except that any person who acquires such an enterprise for the purpose of obtaining the income tax deduction provided for in sections 57-38-71 through 57-38-74 is not deemed to be a ~~businessman~~ an entrepreneur.

3. "Revenue-producing enterprise" means any real property, buildings, and improvements on the property or to the buildings, and any equipment located on the property or in the buildings, or any personal property used or useful in connection with a revenue-producing enterprise engaged in any industry or business not prohibited by the Constitution of North Dakota or the laws of this state.

SECTION 24. AMENDMENT. Section 57-38-72 of the North Dakota Century Code is amended and reenacted as follows:

57-38-72. Income tax deduction for revenue-producing enterprise sale to beginning ~~businessman~~ entrepreneur. Any ~~businessman~~ entrepreneur who sells a revenue-producing enterprise to a beginning ~~businessman~~ entrepreneur is entitled to a reduction in the ~~businessman's~~ entrepreneur's taxable income in an amount equal to all income realized and otherwise subject to state income taxes after consideration of any capital gains treatment.

SECTION 25. AMENDMENT. Section 57-38-73 of the North Dakota Century Code is amended and reenacted as follows:

57-38-73. Rent from beginning ~~businessman~~ entrepreneur exempt from income tax. All income received and otherwise subject to taxation for state income tax purposes resulting from the rental of any revenue-producing enterprise by a ~~businessman~~ an entrepreneur to a beginning ~~businessman~~ entrepreneur under any agreement providing for a lease for at least three years is exempt from income taxes; provided, that no ~~businessman~~ entrepreneur may exclude more than twenty-five thousand dollars pursuant to this section in any tax year nor may any ~~businessman~~ entrepreneur claim this deduction for agreements with more than one beginning ~~businessman~~ entrepreneur for rentals of the same revenue-producing enterprise.

SECTION 26. AMENDMENT. Section 57-38-74 of the North Dakota Century Code is amended and reenacted as follows:

57-38-74. Claim for income tax deduction for revenue-producing enterprise sale or rental to a beginning ~~businessman~~ entrepreneur. To qualify for the deduction provided in sections 57-38-71 through 57-38-74, the taxpayer shall file with the taxpayer's state income tax return a statement from the beginning ~~businessman~~ entrepreneur who purchased or rented the revenue-producing enterprise containing a list of the assets, debts, and net worth of the beginning ~~businessman~~ entrepreneur, together with any other information required by the state tax commissioner. The value placed on any real property located in North Dakota and owned by the buyer must be the amount listed as the current market value on the most recent real estate tax statement for that particular piece of property. To qualify for the deduction for rental income provided in section 57-38-73, the taxpayer shall state on the taxpayer's tax return that any rental arrangement with any other person was not canceled for the purpose of qualifying for this deduction.

SECTION 27. AMENDMENT. Section 57-39.3-02 of the North Dakota Century Code is amended and reenacted as follows:

57-39.3-02. Rate of in lieu fee. The in lieu fee is imposed at a rate calculated annually by the tax commissioner. The rate is calculated by dividing the total local option sales and use tax revenues collected pursuant to sections 11-09.1-05 and 40-05.1-06 in the recent fiscal year by total state sales and use tax revenues collected pursuant to sections 57-39.2-02.1 and 57-40.2-02.1, and then multiplying the resulting quotient by the sales and use tax rate established in

sections ~~57-39.3-02.1~~ 57-39.2-02.1 and 57-40.2-02.1, and rounding the resulting product to the nearest twenty-five hundredths percent.

SECTION 28. AMENDMENT. Section 57-40.3-11 of the North Dakota Century Code is amended and reenacted as follows:

57-40.3-11. Penalties.

1. Any person who violates any of the provisions of this chapter is guilty of a class B misdemeanor.
2. Any person who submits a false or fraudulent motor vehicle purchaser's certificate, or who fails to submit the certificate, is subject to a penalty of five percent of the true amount of the tax which was due or five dollars, whichever is greater, plus one percent of such tax for each month or fraction thereof subsequent to the month in which the motor vehicle purchaser's certificate was due or the false or fraudulent motor vehicle purchaser's certificate was furnished to the director of the department of transportation. Such penalty must be paid to either the tax commissioner or the director of the department of transportation and disposed of pursuant to the provisions of ~~subsection 3 of~~ section 57-40.3-10. The tax commissioner, if satisfied that the failure to submit or the delay was excusable, may waive, and if paid, refund all or any part of such penalty and interest. Unpaid penalties may be enforced in the same manner as the tax imposed by this chapter.
3. Whenever a person, including any motor vehicle dealer, has collected from a person acquiring a motor vehicle, a motor vehicle excise tax in excess of the amount prescribed or due under this chapter, and if the person does not refund the excessive tax collected to the person who remitted it, the person who collected the tax shall pay it to the tax commissioner in the quarterly period in which the excessive collection occurred. The penalty and interest provisions of this section apply beginning at the termination of each reporting period.
4. If upon audit the commissioner determines that a motor vehicle excise tax has not been paid or an additional tax is due, the commissioner shall give notice of determination of the tax due to the person liable for the tax. The notice of determination of tax due fixes the tax finally and irrevocably unless within fifteen days of the date of the notice the person against whom the tax is assessed applies to the commissioner for a hearing under chapter 28-32 or unless the commissioner reduces the liability relating to assessments on the commissioner's own motion. The provisions of chapter 57-39.2 not in conflict with the provisions of this chapter govern the administration of the tax levied in this chapter.

SECTION 29. AMENDMENT. Section 62.1-02-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

62.1-02-01. Who Persons who are not to possess firearms - Penalty.

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of

ten years after the date of conviction or release from incarceration or probation, whichever is the latter.

2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of five years after the date of conviction or release from incarceration or probation, whichever is the latter.
3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.
4. A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02 or deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02, placed the defendant on probation, granted a conditional discharge in accordance with section 19-03.1-30, the defendant's conviction has been reduced in accordance with subsection ~~4~~ 9 of section 12.1-32-02 or section 12.1-32-07.1, or a determination under chapter 27-20 that the person committed a delinquent act equivalent to the offenses provided in subsection 1 or 2.

SECTION 30. REPEAL. Chapter 38-18.2 of the North Dakota Century Code is repealed.

Approved March 16, 2001
Filed March 16, 2001

AERONAUTICS

CHAPTER 56

SENATE BILL NO. 2421

(Senator G. Nelson)

AERONAUTICS COMMISSION COMPENSATION

AN ACT to amend and reenact section 2-05-01 of the North Dakota Century Code, relating to the aeronautics commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-05-01 of the North Dakota Century Code is amended and reenacted as follows:

2-05-01. Aeronautics commission - Creation - Membership. ~~There is hereby created the~~ The North Dakota aeronautics commission to consist ~~consists~~ of five members, ~~who shall be appointed by the governor.~~ The governor shall appoint each member for a term of five years, except that ~~any person a member~~ appointed to fill a vacancy occurring prior to before the expiration of the term for which ~~his~~ the member's predecessor was appointed ~~shall~~ must be appointed only for the remainder of ~~such~~ the term. Each member ~~must~~ shall serve until the appointment and qualification of ~~his~~ the member's successor. Each member of the commission must be a qualified elector of this state ~~and must be appointed by the governor.~~ Any member of the commission may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office. Each member of ~~said~~ the commission shall receive ~~the sum of twenty dollars per day~~ compensation of seventy-five dollars for each day or portion of a day the member is actually engaged in the performance of the duties of ~~his~~ the member's office, and ~~with traveling expenses as provided by section 54-06-09 of this code to be claimed as provided therein, and his board and lodging while away from his home in the performance of his official duties as provided by section 44-08-04~~ payment for mileage and travel expenses as provided in sections 44-08-04 and 54-06-09.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 57

SENATE BILL NO. 2073

(Transportation Committee)
(At the request of the Aeronautics Commission)

AERONAUTICS COMMISSION FEES

AN ACT to amend and reenact sections 2-08-03 and 2-08-04 of the North Dakota Century Code, relating to fees charged by the aeronautics commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-08-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

An applicant for a license or renewal of a license shall submit to the aeronautics commission an inventory of aircraft held by the applicant along with a separate demonstration flight log of time accumulated for those demonstration flights and aircraft tachometer readings for each aircraft on the date of initial application and on November thirtieth before the yearly renewal time. Information on inventory must be provided to the commission on an approved report form. If an aircraft is held in inventory for more than twelve months and is flown more than fifty hours of flight time in any given twelve-month period of time, the commission shall determine if the aircraft is a demonstration aircraft. When the hours flown exceed fifty hours in the twelve-month period, the aircraft is presumed not to be a demonstration aircraft and the aircraft excise tax must be remitted to the aeronautics commission under chapter

57-40.5 unless upon satisfactory proof the aeronautics commission determines the aircraft is used exclusively for demonstration purposes.

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

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

SECTION 2. AMENDMENT. Section 2-08-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

The aeronautics commission shall prescribe and furnish license and renewal license application forms. A nonrefundable fee of ~~fifteen~~ fifty dollars must accompany each application for each dealer location. A dealer's license expires on December thirty-first of each year, and application for renewal must be made before the expiration of the current dealer's license. For each annual ~~fifteen~~ fifty dollar license fee or renewal, the dealer must be issued one dealer's registration for one demonstrator ultralight vehicle. Additional dealer's demonstrator ultralight vehicle registrations must be issued to a licensed dealer upon the payment of ten dollars for each additional demonstrator ultralight vehicle. Fees from license applications of ultralight vehicle dealers and any other fees received for additional demonstrator ultralight vehicle registrations must be deposited in the aeronautics commission special fund.

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

Approved March 21, 2001

Filed March 21, 2001

AGRICULTURE

CHAPTER 58

HOUSE BILL NO. 1181

(Agriculture Committee)

(At the request of the State Board of Higher Education)

BOARD OF AGRICULTURAL RESEARCH AND EDUCATION COMPOSITION AND BUDGET

AN ACT to amend and reenact subsection 1 of section 4-05.1-16, subsection 5 of section 4-05.1-19, section 4-05.1-20, and subsection 1 of section 4-05.1-21 of the North Dakota Century Code, relating to state board of agricultural research and education biennial budget requests and use of agricultural research fund annual proceeds; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹ **SECTION 1. AMENDMENT.** Subsection 1 of section 4-05.1-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The state board of agricultural research and education consists of:
 - a. The president of North Dakota state university or the president's designee;
 - b. The vice president of agricultural affairs at North Dakota state university;
 - c. The administrator of the agricultural experiment station;
 - d. The five persons appointed to the agricultural consultation board by the ag coalition and serving in that capacity on July 1, 1997;
 - e. The five persons appointed to the agricultural consultation board by the extension service's multicounty program units and serving in that capacity on July 1, 1997;
 - f. The two persons appointed to the agricultural consultation board by the president of North Dakota state university as representatives of the state's research extension centers and serving in that capacity on July 1, 1997;

³¹ Section 4-05.1-16 was also amended by section 12 of Senate Bill No. 2021, chapter 46.

- g. The agriculture commissioner, who serves in an ex officio nonvoting capacity; and
- h. The director of the North Dakota state university extension service.

³² **SECTION 2. AMENDMENT.** Subsection 5 of section 4-05.1-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Develop a biennial budget request and submit that request to the state board of higher education ~~on or before March first of each even-numbered year;~~

SECTION 3. AMENDMENT. Section 4-05.1-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-05.1-20. Agricultural research fund - Continuing appropriation. The agricultural research fund is a special fund in the state treasury. The moneys in the fund must be expended for purposes of agricultural research. Any interest earned by the fund is appropriated to the state board of agricultural research and education.

³³ **SECTION 4. AMENDMENT.** Subsection 1 of section 4-05.1-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The state board of agricultural research and education may use the proceeds of the agricultural research fund for reasonable administrative expenses not to exceed fifty thousand dollars and annually shall apportion the remaining proceeds of the agricultural research fund as follows:
 - a. Seventy percent to research activities affecting North Dakota agricultural commodities that account for at least two percent of the gross sales of all agricultural commodities grown or produced in the state. The percentage of the dollars available for each agricultural commodity under this section may not exceed the percentage that the gross sales of the agricultural commodity bear to the North Dakota gross sales of all agricultural commodities grown or produced during the previous year, as determined by the agricultural statistics service;
 - b. Eighteen percent to research activities affecting North Dakota animal agriculture; and

³² Section 4-05.1-19 was also amended by section 14 of Senate Bill No. 2021, chapter 46.

³³ Section 4-05.1-21 was also amended by section 15 of Senate Bill No. 2021, chapter 46.

- c. Twelve percent to research activities affecting new and emerging crops in North Dakota.

Approved April 3, 2001
Filed April 3, 2001

CHAPTER 59

HOUSE BILL NO. 1200

(Representatives M. Klein, Belter, Nelson)
(Senators Krebsbach, Thane, Wanzek)

RESEARCH EXTENSION CENTER LAND PURCHASE

AN ACT to authorize the north central research extension center to purchase certain land in Ward County and to authorize the Williston research extension center to purchase certain land in Williams County, North Dakota; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Purchase of land authorized.

1. The north central research extension center may purchase the land described in this subsection for the price and on the terms as determined by the north central research extension center. The land to be purchased is the southeast quarter of section ten and the northeast quarter of section fifteen, township one hundred fifty-four north, range eighty-three west, Ward County, North Dakota.
2. The Williston research extension center may purchase the land described in this subsection for the price and on the terms as determined by the Williston research extension center. The land to be purchased is the northwest quarter of section thirteen, township one hundred fifty-four north, range ninety-seven west, Williams County, North Dakota.
3. The attorney general shall review and approve as to form and legality all legal documents, papers, and instruments required for the purchases authorized by this Act.

SECTION 2. APPROPRIATION - REFUND FUND TRANSFER. There is appropriated out of any moneys in the attorney general refund fund from lawsuit settlement collections in the state treasury, not otherwise appropriated, the sum of \$260,000, or so much of the sum as may be necessary, and \$60,000 from other funds, to the north central research extension center for the purpose of purchasing land for research extension purposes at the north central research extension center and the sum of \$61,000, or so much of the sum as may be necessary, from any moneys in the attorney general refund fund from lawsuit settlement collections in the state treasury, not otherwise appropriated, and \$24,000 from other funds, to the Williston research extension center for the purpose of purchasing land for research extension purposes in Williams County, for the biennium beginning July 1, 2001, and ending June 30, 2003. The funds appropriated from the attorney general refund fund must be transferred to the agriculture research and extension operating fund as requested by the state board of agriculture research and education.

Approved April 28, 2001
Filed April 28, 2001

CHAPTER 60

SENATE BILL NO. 2104

(Agriculture Committee)

(At the request of the State Seed Department)

SEED COMMISSION MEMBERSHIP AND SEED LABELING

AN ACT to amend and reenact sections 4-09-03, 4-09-13, 4-09-14.4, 4-09-16, 4-09-17, 4-09-17.1, and 4-09-18 of the North Dakota Century Code, relating to state seed commission membership and seed labeling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-03. State seed commission - Members - Meetings - Appointment and duties of commissioner.

1. The state seed commission is the governing board of the seed department and shall adopt rules and regulations pursuant to chapter 28-32 to effectuate the purposes of this section.
2. The state seed commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the red river valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association who also operates a state-approved seed conditioning plant selected by the board of directors of the North Dakota grain dealers association, and the agriculture commissioner, or the commissioner's designee, who shall serve as chairman. The associate dean and director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is ~~an advisory, nonvoting~~ a voting member of the commission.
3. The commission shall meet ~~during the months of November and June of each~~ a minimum of two times each calendar year and may hold special meetings at the call of the chairman or by request of any two members of the commission. Members of the commission must be reimbursed for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for attendance at regular and special meetings. A commission member unable to attend a meeting of the commission may be represented by a proxy who has written authorization from such commission member.

4. The commission shall appoint a qualified manager of the seed department who must be known as the state seed commissioner. The commission shall fix the salary of the commissioner within legislative appropriation therefor. The commissioner's appointment must be reviewed annually by the commission, and the commissioner is subject to removal for cause. In the event of a vacancy in the office of seed commissioner, the commission may appoint a temporary state seed commissioner to serve until such time as a permanent commissioner is appointed. The state seed commissioner has responsibility for preparing the biennial budget and annual salary schedules which must be approved by the commission prior to submission to the state budget director. The commissioner is directly responsible to the commission and shall make semiannual reports to the commission and such other reports as requested by the commission.

³⁴ **SECTION 2. AMENDMENT.** Section 4-09-13 of the North Dakota Century Code is amended and reenacted as follows:

4-09-13. 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 ~~thereto~~ as of July 1, 2001, except if the commissioner, by rule, establishes tolerances that meet or exceed Federal Seed Act tolerances.

SECTION 3. AMENDMENT. Section 4-09-14.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-14.4. Permit. The commissioner is authorized at the commissioner's discretion, under such rules as may be promulgated, to issue a permit to any person to label agricultural, vegetable, flower, and tree and shrub seeds in North Dakota. The person shall apply to the commissioner for a permit and shall furnish the seed department with ~~periodic statements~~ an annual statement of all seeds sold in North Dakota when requested by the seed commissioner. ~~Each statement must be itemized to show the number of each class of containers referred to in section 4-09-14.3.~~ Statements that must be furnished for each reporting period, must be delivered to the commissioner not later than thirty-one days after the end of each reporting period, and must be accompanied by the appropriate fee. A penalty fee of ten dollars, or five percent of the total amount due, whichever is greater, will be assessed for reports that are not postmarked within thirty-one days after the end of the reporting period. Any person to whom a permit is granted shall show such information in connection therewith as the commissioner may require as part of the label on all seed sold. The commissioner or the commissioner's authorized agent has the right at all reasonable times to examine the records of any permitholder to verify the correctness of its statements. ~~The commissioner, when requested, may grant a farmer who grows his own seed and sells only his own seed, the right to report annually.~~

SECTION 4. AMENDMENT. Section 4-09-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

³⁴ Section 4-09-13 was also amended by section 1 of Senate Bill No. 2204, chapter 62.

4-09-16. Certified seed. The commissioner shall:

1. Establish a seed certification system for this state and adopt rules governing application for service, acceptance of suitable seed stocks for the production of a foundation, registered, certified, or inspected crop, field inspection, bin inspections, harvesting, handling, storage, conditioning, and preparation and handling of such seed for market.
2. Designate kinds, varieties, and names of seed stocks, and establish standards of quality, degree of disease infection, and amounts of any admixtures, foreign seeds, noxious weeds, or other weed seeds that are allowed in any lot or stock of seed, which may be or become eligible for field inspection or for final certification of the seed crop.
3. Prescribe all labels, seals, certificates, or similar statements that must be used for, or in relation to, any seed, or the various kinds and qualities grown, handled, stored, held for sale, sold, or offered or exposed for sale in this state as "breeders", "foundation", "registered", or "certified"; ~~or "inspected"~~ seed, and shall specify what words, terms, or figures such labels, seals, certificates, or the containers of such seed must bear.
4. Cooperate with the managers of any seed conditioning plants, or any commercially established seed firm, or any person within or outside of the state having proper facilities and equipment to store, condition, and otherwise handle seed which is eligible for certification, for the purposes of handling and marketing "breeders", "foundation", "registered", or "certified"; ~~or "inspected"~~ seed.
5. Cooperate in the selection, testing, and growing of seed for certification purposes and in the arrangement for increase of foundation seed stocks suitable for the production of certified seed.
6. Establish an equitable schedule of fees and charges, which must be uniform throughout the state, for inspecting, testing, analyzing, and recording such seed, and for other work and duties incident to the growing, handling, marketing, and certifying of North Dakota seed, and shall collect all such fees and charges.

SECTION 5. AMENDMENT. Section 4-09-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-17. Certified seed - Regulations governing labeling and representing. Seed grown in North Dakota, or grown elsewhere and transported into this state, which is sold, offered or exposed for sale, stored, transported, or distributed, or held with intent to sell or plant the same, may not be represented, advertised, labeled, or characterized in any way, either orally or in writing, with or by the use of the term "breeders", "foundation", "registered", "certified", "pedigreed", or "elite"; ~~or "inspected"~~ seed, or any term or terms conveying a meaning substantially equivalent to the meaning of any of said terms, without the approval and authorization of the commissioner, who may adopt such rules as the commissioner finds necessary for the proper regulation and protection of the certified seed industry.

SECTION 6. AMENDMENT. Section 4-09-17.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-17.1. Plant Variety Protection Act. Any seed advertised, offered for sale, or sold by variety name and for which a certificate of plant variety protection has been issued under the Plant Variety Protection Act, as amended, [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481 et seq., effective as of July 1, 2001] as being for sale only as a class of certified seed must be certified by an official seed certifying agency in order for the seed to be advertised, offered for sale, or sold by variety name in the state of North Dakota. Seed from a certified lot may be labeled as to variety name when used in a blend or mixture by or with approval of the owner of the variety.

SECTION 7. AMENDMENT. Section 4-09-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-18. Certified seed standards - Fees. The rules, and requirements, ~~and fees~~ for certification of crop seeds, other than potatoes, must be those prescribed and set forth in the state seed department bulletin number 51, published in March 1945, and subsequent announcements and revisions of the bulletin.

The rules, and requirements, ~~and fees~~ for seed potato certification must be those prescribed and set forth in the state seed department bulletin number 49 as revised in August 1950, and subsequent announcements and revisions of the bulletin.

Approved April 23, 2001

Filed April 23, 2001

CHAPTER 61

SENATE BILL NO. 2169

(Agriculture Committee)

(At the request of the State Seed Arbitration Board)

SEED ARBITRATION BOARD COMPOSITION AND PETITIONS

AN ACT to amend and reenact sections 4-09-03.1 and 4-09-20.2 of the North Dakota Century Code, relating to the composition of and petitions to the state seed arbitration board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-03.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-03.1. State seed arbitration board - Compensation and expenses.

The state seed arbitration board consists of the commissioner of agriculture, the state seed commissioner, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the chair of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the commissioner of agriculture, or their authorized designees. Each board member is entitled to receive as per diem compensation sixty-two dollars and fifty cents, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the board, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official. Compensation and expenses for board members who do not receive compensation or salary as a regular state employee or official must be paid by the department of agriculture.

SECTION 2. AMENDMENT. Section 4-09-20.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-20.2. Seed arbitration board - Petition - Arbitration hearing. A seed labeler, seed dealer, or a seed customer ~~shall~~ may petition the commissioner of agriculture in writing for a hearing to settle a dispute involving a seed transaction. The commissioner of agriculture shall submit the dispute to the seed arbitration board, and the board shall arbitrate the dispute. The board, within thirty days after the hearing, shall make a nonbinding recommendation for the resolution of the dispute. Evidence presented to the board and any findings or recommendations by the board are admissible as evidence in any subsequent proceeding. The board shall adopt rules and procedures for arbitration proceedings, including a formula for reimbursement by the parties of the expenses of the arbitration process.

Approved March 28, 2001
Filed March 28, 2001

CHAPTER 62

SENATE BILL NO. 2204

(Senators Nichols, Erbele, Tomac)
(Representatives Boehm, Nelson, Rennerfeldt)

SEED CLASSIFICATION AND NOXIOUS WEED SEEDS

AN ACT to create and enact a new section to chapter 4-09 of the North Dakota Century Code, relating to the establishment of a seed classification system; to amend and reenact section 4-09-13 and subsection 1 of section 4-09-14 of the North Dakota Century Code, relating to noxious weed seeds; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁵ **SECTION 1. AMENDMENT.** Section 4-09-13 of the North Dakota Century Code is amended and reenacted as follows:

4-09-13. 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 ~~thereto~~ 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.

SECTION 2. A new section to chapter 4-09 of the North Dakota Century Code is created and enacted as follows:

Seed classification system - Weed tolerances. The seed commission shall establish a seed classification system for annual crops and perennial crops which references tolerances for each restricted noxious weed species.

SECTION 3. AMENDMENT. Subsection 1 of section 4-09-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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,

³⁵ Section 4-09-13 was also amended by section 2 of Senate Bill No. 2104, chapter 60.

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~~ 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 ~~such~~ the seed;
- d. ~~Such~~ The seed contains prohibited noxious weed seeds;
- e. With regard to agricultural or vegetable seed, ~~such~~ 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. ~~Such~~ The seed is designated, offered, represented, or advertised under any name or identification other than that by which it was known originally;
- g. ~~Such~~ The seed contains restricted noxious weed seeds in excess of ~~ninety~~ 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 ~~and regulations to be made therefor~~ 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 ~~such~~ the seed, together with a proposed, distinctive name ~~therefor~~. The commissioner, within one year, shall make ~~such~~ any tests ~~as the commissioner considers necessary~~, and if the commissioner finds as a result of ~~such~~ the tests that ~~such~~ the seed or plant is of a new variety, distinct from any known variety of ~~such~~ the seed ~~known theretofore~~ and that the proposed name ~~proposed therefor~~ will properly distinguish ~~said~~ the seed from any and all other varieties ~~thereof~~, the commissioner shall issue to the ~~person applying therefor~~ applicant a permit to designate ~~such~~ the seed by ~~said~~ 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 ~~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~~ this state in lieu of the labeling provided for in this chapter.

SECTION 4. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 63**SENATE BILL NO. 2103**

(Agriculture Committee)

(At the request of the State Seed Department)

COMMODITY GRADE INSPECTION FEES

AN ACT to amend and reenact section 4-09.1-03 of the North Dakota Century Code, relating to elimination of administrative rulemaking proceedings in establishing fees for commodity grade inspections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09.1-03 of the North Dakota Century Code is amended and reenacted as follows:

4-09.1-03. Grade inspection - Fees and charges. The commissioner, with the approval of the seed commission, shall ~~fix by rule~~ establish and charge fees for making commodity grade inspections, and the fees must be uniform throughout the state for periods of time as must be specified. The fee for commodity grade inspection must, as nearly as possible, approximate the cost of the service.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 64

SENATE BILL NO. 2389

(Senators Holmberg, Tallackson)

CERTIFIED SEED POTATO TRANSFERS

AN ACT to amend and reenact section 4-10-06.1 of the North Dakota Century Code, relating to transfers of certified seed potatoes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10-06.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10-06.1. Seed potatoes - Certification requirement.

1. A person may not plant seed potatoes in lots of one acre [.405 hectare] or more, for the purpose of selling the crop to be harvested, unless the seed potatoes ~~have~~:
 - a. ~~Have~~ been certified by the commissioner as meeting the standards of this chapter, ~~have~~;
 - b. ~~Have~~ been certified by another state or province having a similar seed potato quality assurance program; ~~or have~~
 - c. ~~Have~~ been field-inspected and approved by the commissioner. ~~However, the~~
2. ~~The commissioner shall permit a North Dakota growers grower~~ to plant uncertified potatoes grown by ~~them~~ the grower, if the ~~growers are grower is~~ within twelve months of having ~~their~~ the grower's own certified parent seed potatoes.
3. The commissioner shall permit a North Dakota potato grower to sell or otherwise transfer certified seed potatoes to another North Dakota potato grower. The recipient grower may plant the seed potatoes only for commercial production. The seed potatoes may not be recertified or retained for use in the following production cycle.
4. If the commissioner has reason to believe that seed potatoes meeting the requirements of this section are not available in sufficient quantities to fulfill planting needs, the commissioner may permit the planting of seed potatoes with a higher disease content, provided that bacterial ring rot is not present and that a serious disease threat is not posed.

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

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 65

HOUSE BILL NO. 1250

(Representatives Berg, D. Johnson, Nicholas)
(Senators Erbele, Heitkamp, Wanzek)

AGRICULTURAL COMMODITY COUNCIL COMPENSATION

AN ACT to amend and reenact sections 4-10.1-06, 4-10.2-05, 4-10.3-05, 4-10.4-05, 4-10.5-04, 4-10.6-04, and 4-10.7-05, subsection 4 of section 4-18.1-04, subsection 3 of section 4-27-05, and sections 4-28-05 and 4-34-07 of the North Dakota Century Code, relating to compensation for agricultural commodity council members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.1-06 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-06. Meetings - Quorum - Compensation and expenses of council.

A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving such a petition. ~~Each~~ The council shall determine the amount of compensation payable to each member of the council, except the chairman, shall receive the sum of twenty-five. The amount payable may not exceed seventy-five dollars per day for each day spent in performance of the business of the council, ~~together with traveling plus reimbursement of expenses as provided by law for state officers, while on council business on the same basis as employees of attending meetings or performing duties directed by the commissioner.~~

SECTION 2. AMENDMENT. Section 4-10.2-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.2-05. Meetings - Quorum - Compensation and expenses of council.

A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of two council members within seven days of receiving such a petition. ~~Each~~ The council shall determine the amount of compensation payable to each member of the council is entitled to receive as compensation sixty-two dollars and fifty cents. The amount payable may not exceed seventy-five dollars per day and to plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.

SECTION 3. AMENDMENT. Section 4-10.3-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.3-05. Meetings - Quorum - Compensation and expenses of council.

A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. The chairman shall call meetings of the council. The chairman shall call all special meetings on the petition of three council members within seven days of receiving the petition. ~~Each~~ The council shall determine the amount of compensation payable to each member of the council is entitled to receive as compensation sixty-two dollars and fifty cents. ~~The amount payable may not exceed seventy-five dollars per day and to plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.~~

SECTION 4. AMENDMENT. Section 4-10.4-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.4-05. Meetings - Quorum - Compensation and expenses of council.

A quorum is necessary for the transaction of all business in carrying out the duties of the council. The chairman shall call all meetings of the council except special meetings which the chairman shall call on the petition of two council members within seven days of receiving such a petition. ~~Each~~ The council shall determine the amount of compensation payable to each voting member of the council is entitled to receive sixty-two dollars and fifty cents as compensation. ~~The amount payable may not exceed seventy-five dollars per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 plus reimbursement of expenses as provided by law for state officers, while attending council meetings or in the performance of such special performing duties as directed by the council may direct.~~ The compensation provided in this section may not be paid to any member of the council who receives salary or other compensation as a regular employee of the state.

SECTION 5. AMENDMENT. Section 4-10.5-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.5-04. Meetings - Quorum - Compensation and expenses of council.

All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. ~~Each~~ The council shall determine the amount of compensation payable to each member of the council, except the commissioner, is entitled to receive sixty-two dollars and fifty cents. ~~The amount payable may not exceed seventy-five dollars per day as compensation, together with expenses as provided in sections 44-08-04 and 54-06-09 plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council, except that no compensation may be paid to any council member who receives compensation or salary as a regular state employee or official.~~

SECTION 6. AMENDMENT. Section 4-10.6-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.6-04. Meetings - Compensation and expenses of council. The chairman shall call all meetings of the council. The chairman shall call special meetings on the petition of three council members, within seven days of receiving the petition. ~~Each~~ The council shall determine the amount of compensation payable to each council member is entitled to receive as per diem compensation sixty-two dollars and fifty cents, and. ~~The amount payable may not exceed 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 council, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

SECTION 7. AMENDMENT. Section 4-10.7-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.7-05. Meetings - Quorum - Compensation of council members. A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. ~~Each~~ The council shall determine the amount of compensation payable to each member of the council is entitled to receive as compensation sixty-two dollars and fifty cents. The amount payable may not exceed seventy-five dollars per day ~~and to plus~~ reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

SECTION 8. AMENDMENT. Subsection 4 of section 4-18.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- ~~Each~~ The board shall determine the amount of compensation payable to each member of the board shall receive fifty. The amount payable may not exceed seventy-five dollars per diem for each day actually spent in the performance of the member's official day plus reimbursement for expenses as provided by law for state officers, while attending meetings or performing duties; ~~plus mileage and expenses as are allowed to other state officers, but in no event may a~~ directed by the board. A member's per diem payments may not exceed fifteen hundred dollars in any one year.

SECTION 9. AMENDMENT. Subsection 3 of section 4-27-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- ~~The appointive and elected members of the commission are entitled to receive a salary of forty-seven dollars~~ shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed seventy-five dollars per day plus reimbursement of expenses as provided by law for state officers, while actually engaged in the official duties of attending meetings or performing duties directed by the commission; plus their actual expenses at the same rates as other state officials.

SECTION 10. AMENDMENT. Section 4-28-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-28-05. Wheat commission - Meeting - Expenses - Legal adviser. Upon call of the governor, the commission shall first meet and organize by electing from the membership a chairman and vice chairman, who shall hold office for one year and until their successors are elected and have qualified. Thereafter the commission shall meet at least once every calendar quarter at such times and places as determined by the commission and may meet in special meetings upon such call and

notice as prescribed by rules adopted by the commission. ~~Members of the~~ The commission ~~must be reimbursed for actual~~ shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed seventy-five dollars per day plus reimbursement of expenses necessarily incurred in as provided by law for state officers, while attending meetings and or performing other official duties on the same basis as other state officers and are entitled to receive as per diem compensation sixty-two dollars and fifty cents for each day actually devoted to official business of directed by the commission. The attorney general shall act as legal adviser to the commission or designate an assistant for that purpose and within the limit of the funds available to the commission it may employ other counsel to advise and represent the commission in its affairs and proceedings.

SECTION 11. AMENDMENT. Section 4-34-07 of the North Dakota Century Code is amended and reenacted as follows:

4-34-07. Compensation - Expenses. ~~Commission members shall receive the sum of forty~~ The commission shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed seventy-five dollars per day for each meeting attended and shall receive necessary plus reimbursement of expenses for meals, lodging, and travel in the same amount and in the same manner as permitted as provided by law for state officials and employees officers, while attending meetings or performing other official duties as directed by the commission. The members of the commission shall receive no other salary or compensation for their service on the commission.

Approved March 13, 2001

Filed March 13, 2001

CHAPTER 66

HOUSE BILL NO. 1258

(Representatives Monson, Kerzman, Nelson, Nicholas)
(Senators Krauter, Wanzek)

CANOLA DISTRICTS AND OILSEED COUNCIL MEMBERSHIP

AN ACT to create and enact a new section to chapter 4-10.2 of the North Dakota Century Code, relating to canola districts; to amend and reenact section 4-10.2-03 of the North Dakota Century Code, relating to membership of the oilseed council; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.2-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.2-03. North Dakota oilseed council - Membership - Election - Term.

1. The North Dakota oilseed council is composed of ~~one~~:
 - a. One participating sunflower grower elected from each of the districts established in section 4-10.2-04; ~~one~~;
 - b. One participating canola grower elected from each of the districts established in section 2 of this Act;
 - c. One participating safflower grower appointed by the governor; ~~one~~;
 - d. One participating crambe grower appointed by the governor; ~~one participating rapeseed or canola grower appointed by the governor; one~~;
 - e. One participating flax grower appointed by the governor; ~~and one~~
 - f. One member appointed by the director of the agricultural experiment station.
2. The chairman of the council must be a member of the council elected by a majority vote of the council. The commissioner is an ex officio member of the council.
3. a. Every elected and appointed council member must be a citizen of the state.
 - b. Every The elected member who is a sunflower grower must be a bona fide resident of and participating sunflower grower in the district the member represents.

McKenzie, Mercer, Oliver, Divide, Burke, Williams, Mountrail, Renville, Ward, and McLean.

2. District two consists of the counties of Bottineau, Rolette, Pierce, Sheridan, Wells, Eddy, Foster, Burleigh, Kidder, Benson, Stutsman, McIntosh, Emmons, Logan, McHenry, LaMoure, and Dickey.
3. District three consists of the counties of Cavalier, Pembina, Ramsey, Towner, Walsh, Nelson, Grand Forks, Griggs, Steele, Traill, Barnes, Cass, Ransom, Richland, and Sargent.

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

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 67**HOUSE BILL NO. 1095**

(Agriculture Committee)

(At the request of the Agricultural Products Utilization Commission)

APUC MEMBER COMPENSATION

AN ACT to amend and reenact section 4-14.1-05 of the North Dakota Century Code, relating to compensation of members of the agricultural products utilization commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-05. Agricultural products utilization commission - Reimbursement - Compensation. All members of the agricultural products utilization commission must be reimbursed for their actual and necessary expenses incurred in the performance of their duties, in the same manner as other state officials are reimbursed, according to sections 44-08-04 and 54-06-09; ~~and if.~~ If not otherwise employed by the state of North Dakota, members of the commission are entitled to receive as per diem compensation sixty-two dollars and fifty cents for each day devoted to attending meetings and performing other duties relating to official business of the commission. ~~may receive up to fifty dollars for each regular meeting attended~~ The commission chairman, if not otherwise employed by the state of North Dakota, may receive an additional one hundred dollars for each day of a regular meeting attended as payment for reviewing and evaluating grant proposals.

Approved March 12, 2001

Filed March 12, 2001

CHAPTER 68

SENATE BILL NO. 2122

(Agriculture Committee)

(At the request of the State Board of Higher Education)

TREES FOR NORTH DAKOTA PROGRAM

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to optional income tax contributions to the trees for North Dakota program trust fund; to amend and reenact sections 4-21.2-01, 4-21.2-02, and 4-21.2-03 of the North Dakota Century Code, relating to changing the centennial trees program to the trees for North Dakota program; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-21.2-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-21.2-01. (Effective through June 30, 2001) Centennial trees Trees for North Dakota program. The centennial trees for North Dakota program is created for the public purpose of fostering the goal of planting one hundred million trees in North Dakota during the decade of the 1990s strengthening the tradition of tree planting and management in this state.

SECTION 2. AMENDMENT. Section 4-21.2-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-21.2-02. (Effective through June 30, 2001) Centennial trees Trees for North Dakota program trust fund. A special fund known as the centennial trees for North Dakota program trust fund is established in the state treasury. Income earned on moneys in the fund must be credited to the fund. The state forester shall deposit all program funds received for the program from governmental and private sources in the trust fund. Moneys in the fund Program funds may be spent directly or by expended for direct costs or distributed for grants and contracts by the state forester within the limits of legislative appropriations for defraying the costs associated with execution of the centennial trees for North Dakota program.

The state treasurer shall transfer all funds in the centennial trees program trust fund to the trees for North Dakota program trust fund.

SECTION 3. AMENDMENT. Section 4-21.2-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-21.2-03. (Effective through June 30, 2001) Authority for local governments to participate. Any political subdivision of the state may provide financial aid or supportive services to the ~~centennial trees~~ for North Dakota program.

SECTION 4. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Optional contributions to trees for North Dakota program trust fund. An individual may designate on the tax return of that individual a contribution to the trees

for North Dakota program trust fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the individual. The tax commissioner shall notify taxpayers of this optional contribution on the individual state income tax returns. The tax commissioner shall transfer the amount of optional contributions under this section to the state treasurer for deposit in the trust for North Dakota program trust fund for use as provided in chapter 4-21.2.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 6, 2001

Filed March 6, 2001

CHAPTER 69

SENATE BILL NO. 2171

(Senator Andrist)

DRY PEA AND LENTIL ASSESSMENT FUND

AN ACT to amend and reenact sections 4-24-09 and 4-24-10 of the North Dakota Century Code, relating to the dry pea and lentil assessment fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-24-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-24-09. Agricultural commodity assessments funds - Investment income allocation. The state treasurer, notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, oilseed fund, dry bean fund, dry pea and lentil fund, barley fund, soybean fund, corn fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

SECTION 2. AMENDMENT. Section 4-24-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-24-10. Agricultural commodity promotion groups to report to legislative assembly - Report contents. Between the first and tenth legislative day of each regular legislative session, the North Dakota potato council, the North Dakota oilseed council, the North Dakota dry bean council, the North Dakota dry pea and lentil council, the North Dakota barley council, the North Dakota soybean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk marketing board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. Each report must contain a summary of the activities of the commodity group during the current biennium, a single-page uniform statement of revenues and expenditures for the next biennium. Each report, except the reports of the North

Dakota beekeepers association and the North Dakota turkey federation, must also include a state auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 70**HOUSE BILL NO. 1209**

(Representatives Mueller, D. Johnson, Metcalf)
(Senators Robinson, Urlacher, Wanzek)

AGRICULTURAL HALL OF FAME NOMINEES

AN ACT to amend and reenact subsection 4 of section 4-24-11.1 of the North Dakota Century Code, relating to the North Dakota agricultural hall of fame; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 4-24-11.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The committee ~~may induct no more than three~~ shall determine the number of nominees to be inducted into the North Dakota agricultural hall of fame in 1998 and no more than two nominees each year ~~thereafter~~. Any person who is nominated for induction into the North Dakota agricultural hall of fame and receives at least one vote is automatically considered for induction the following year. The nominee may provide the committee with updated or additional information to be considered.

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

Approved March 13, 2001
Filed March 13, 2001

CHAPTER 71

HOUSE BILL NO. 1442

(Representatives Lemieux, Kempenich, Lloyd, Pietsch)
(Senators G. Nelson, Wardner)

GENETICALLY MODIFIED CROP SAMPLING

AN ACT relating to the sampling of genetically modified crops.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Genetically modified seed - Patent infringement - Sampling - Mediation.

1. For purposes of this section, farmer means the person responsible for planting a crop on, managing the crop, and harvesting the crop from land on which a patent infringement is alleged to have occurred.
2. a. Before a person holding a patent on a genetically modified seed may enter upon any land farmed by another for the purpose of obtaining crop samples to determine whether patent infringement has occurred, the person holding the patent:
 - (1) Shall notify the agriculture commissioner in writing of the person's belief that a patent infringement has occurred and include facts from the allegation;
 - (2) Shall notify the farmer in writing of the allegation that a patent infringement has occurred and request written permission to enter upon the farmer's land; and
 - (3) Must obtain the written permission of the farmer.
- b. If the farmer withholds written permission, the person holding a patent may petition the state district court for an order granting permission to enter upon the farmer's land.
3. The farmer may accompany the person holding the patent at the time any samples are taken.
4. If requested by the farmer or the person holding the patent, the state seed commissioner shall accompany the person holding the patent at the time any sample is taken. The state seed commissioner may impose a fee for providing that service. The patent holder and the farmer shall each pay one-half of the fee charged by the commissioner.
5. If the person holding a patent believes that the crop from which samples are to be taken may be subject to intentional damage or destruction, the person may seek a protection order from the state district court. The protection order may not interrupt or interfere with normal farming practices, including harvest and tillage.

6. The person holding the patent may take samples from a standing crop, from representative standing plants in the field, or from crops remaining in the field after harvest.
7. The person holding the patent may obtain no more samples than those reasonably necessary to make a determination regarding patent infringement. An equal number of samples must remain in the custody of the state seed commissioner or the farmer for future comparison and verification purposes. All samples taken must be placed in containers, labeled as to the date, time, and location from which they were taken, and the labels must be signed by the farmer, the person who took the samples, and the state seed commissioner if the commissioner was present at the time the samples were taken. The patent holder and the farmer shall share equally the cost of the containers needed for the second set of samples which are retained by the state seed commissioner or the farmer. The farmer and the person holding the patent shall share equally the cost of the containers and the cost of obtaining the samples.
8. Within sixty days from the date the samples are taken, an independent laboratory shall conduct all tests to determine whether patent infringement has occurred. The person holding the patent shall notify the farmer of the test results, by certified mail or by any other method of delivery for which a signature is required, within twenty-one days from the date the results were reported to the person holding the patent.
9. The parties may participate in mediation at any time. The mediation must be conducted by a mediator jointly selected by the farmer and the person holding the patent. If the farmer and the person holding the patent are unable to select a mediator, the mediation must be conducted by an independent agricultural mediation service.
10. If the case is not settled after mediation, either party may file a claim for relief with the federal district court having jurisdiction over the claim. Unless otherwise specified in a contract between the farmer and the person holding the patent, the appropriate state district court is the one that has jurisdiction over that portion of this state in which the farmer's land is located.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 72

HOUSE BILL NO. 1170

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

CREAM STANDARDS ELIMINATED

AN ACT to amend and reenact sections 4-30-01, 4-30-02, 4-30-02.1, 4-30-03.1, 4-30-03.2, 4-30-03.3, 4-30-03.4, 4-30-03.5, 4-30-03.6, 4-30-03.7, 4-30-03.8, 4-30-13.1, 4-30-18, 4-30-20, 4-30-36, 4-30-36.2, 4-30-36.3, 4-30-36.4, 4-30-37, 4-30-38, 4-30-47, and 4-30-48 of the North Dakota Century Code, relating to elimination of references to the sale of cream and to update references to federal laws and regulations; and to repeal sections 4-30-19, 4-30-21, 4-30-22, 4-30-23, 4-30-24, 4-30-25, 4-30-26, and 4-30-42 of the North Dakota Century Code, relating to standards for production and sale of cream.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-30-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Approved laboratory" means a laboratory in which the entire facilities and equipment have been approved by the department as being adequate to perform the necessary official tests in accordance with the North Dakota laws and the rules of the department.
2. "Cheese factory" means a place where cheese is made for commercial purposes.
3. "Commissioner" means the agriculture commissioner ~~of agriculture~~ or the commissioner's designee.
4. "Composite sample" means a mixture of single samples of milk or milk products taken from different lots or deliveries, the amount taken each time being in proportion to the amount of milk or milk products delivered. Composite samples are usually taken for determining the butterfat content of a product and are tested at a frequency of not less than once every fifteen days. Preservatives may be added.
5. "Condensery" means a place where condensed or evaporated milk is produced or where milk is changed to a thick liquid by evaporation of a part of the water.
6. "~~Cream station~~" means ~~any place other than a creamery where deliveries of cream are weighed, graded, sampled, tested, or collected for purchase.~~
7. "~~Creamery~~" means a place where ~~butter~~ is made for commercial purposes.

- ~~8.~~ 8. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.
- ~~9.~~ 7. "Dairy or dairy farm" means a place where one or more dairy animals are kept, a part or all of the milk or milk products from which is sold or offered for sale.
- ~~40.~~ 8. "Department" means the department of agriculture.
- ~~44.~~ 9. "Distributor" means a person who purchases milk or milk products and transports them to a retail dealer or a consumer.
- ~~42.~~ 10. "Drying plant" means a place which manufactures dry milk products obtained by the removal of water from milk or milk products.
- ~~43.~~ 11. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milkfat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk; provided, however, that this term shall not be construed to mean or include:
- a. Any distinctive proprietary food compound not readily mistaken for a dairy product, where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;
 - b. Any dairy product flavored with chocolate or cocoa, or the vitamin content of which has been increased, or both, where the fats or oils other than milkfat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredths per centum of the weight of the finished product, used as a carrier of such vitamins; or
 - c. Oleomargarine.
- ~~44.~~ 12. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating the quality of the product.
- ~~45.~~ 13. "Ice cream plant" means a place where ice cream is made for commercial purposes.
- ~~46.~~ 14. "Ice milk plant" means a place where ice milk is made for commercial purposes.

- ~~47.~~ 15. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:
- The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.
 - The packaging used resembles the packaging used for milk or for a milk product.
 - The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.
 - Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.
 - The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to flavor, texture, smell, and appearance of a food product or food compound.
- ~~48.~~ 16. "Milk ~~or cream~~ hauler" means a person who owns vehicles used to transport raw milk from a dairy farm to a dairy facility.
- ~~49.~~ 17. "Milk plant or bottling plant" means a place where milk or milk products are collected, handled, processed, stored, and prepared for distribution.
- ~~20.~~ 18. "Milk solids or total solids" means the total amount of solids in milk.
- ~~24.~~ 19. "Overrun" means the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes.
- ~~22.~~ 20. "Pasteurization" as applied to milk or skim milk means the process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at such temperature continuously for at least thirty minutes; or heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44 degrees Celsius], and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment. When applied to cream for buttermaking, the cream shall be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds. Nothing contained in this definition may be construed as barring any other process which

has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the dairy commissioner.

- ~~23.~~ 21. "Peddler" means a person who purchases milk or milk products and sells them directly to consumers at any place other than from a store, stand, or other fixed place of business.
- ~~24.~~ 22. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and limited liability companies, and any and all other business units, devices, or arrangements.
- ~~25.~~ 23. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner which changes the natural, physical, or chemical properties of the original product.
- ~~26.~~ 24. "Producer dairy" means a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing.
- ~~27.~~ 25. "Producer-processor" or "producer-distributor" means a producer who is also a processor or distributor.
- ~~28.~~ 26. "Raw milk or raw milk products" means products which have not been treated by the process of pasteurization as defined in this section.
- ~~29.~~ 27. "Receiving and transfer station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
- ~~30.~~ 28. "Retail" means the sale of milk or milk products directly to the consumer.
- ~~31.~~ 29. "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use or raw milk or milk products from a dairy farm to a dairy facility.
- ~~32.~~ 30. "Sampling" means a procedure whereby a portion or specimen of milk or milk products is taken for the purpose of grading or testing.
- ~~33.~~ 31. "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.
- ~~34.~~ 32. "Testing" means an examination of milk, or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof.
- ~~35.~~ 33. "3A Standards" means standards which have been established for certain equipment, utensils, and other items by the 3A Sanitary Standards Committee of the International Association of Milk and Food Sanitarians, Incorporated.
- ~~36.~~ 34. "Transfer station" means a place where milk or milk products are regularly transferred from one vehicle to another. This definition shall

not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.

- ~~37.~~ 35. "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of resale.

SECTION 2. AMENDMENT. Section 4-30-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-02. Licenses required - Fees - Term. Every producer-processor, peddler, distributor, every person purchasing milk or milk products for processing or manufacturing, or owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant, ~~cream station,~~ milk plant, every other business engaged in the processing or manufacturing of milk or milk products and every organization acquiring milk or milk products as an agent for sale on behalf of others and doing business within this state shall obtain the license required by this section for each such place of business. Application for license must be made to the commissioner upon forms as the commissioner may require. Upon making application for license, it is implied that consent is given by the applicant for inspection by the department. If the commissioner finds that the applicant conforms to the North Dakota laws and the rules and regulations of the department, the commissioner shall issue a license for conducting those operations listed on the application form. If a licensee wishes to conduct operations other than those listed, the licensee may request that the commissioner approve them, and if the commissioner finds that the proposals are in conformance with North Dakota laws and the rules of the department, the commissioner shall approve them. The license must be posted conspicuously in each licensed business. All licenses issued under this section must expire on the thirtieth day of June of each year and are not transferable. The fee for licenses is twenty-five dollars. Every organization acquiring milk or milk products as an agent for sale on behalf of others is, for the purposes of this chapter, deemed to be a purchaser of milk ~~or cream~~ from a dairy producer.

SECTION 3. AMENDMENT. Section 4-30-02.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-02.1. Records release required with application for licensure. A purchaser of milk ~~or cream~~ in North Dakota shall file with the license application a release authorizing the commissioner access to the applicant's financial records held by financial institutions, accountants, and others. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing the applicant or in the course of an investigation of the applicant due to a complaint against the applicant or when based upon evidence establishing probable cause of a violation of this chapter. Information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to any state agency and to any prosecutorial official requiring the information for use in performing official duties.

SECTION 4. AMENDMENT. Section 4-30-03.1 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.1. Financial condition - Assurance of prompt payment. Each applicant for a license under section 4-30-02 who purchases milk ~~or cream~~ from a dairy producer shall have first satisfied the department that the applicant's financial condition is such as to reasonably assure prompt payment to the dairy producers for purchased milk ~~and cream~~.

SECTION 5. AMENDMENT. Section 4-30-03.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-03.2. Statement of business operations or financial condition - Filing - Review by Bank of North Dakota - Confidential - Audited. Each applicant for a license under section 4-30-02 who purchases milk ~~or cream~~ from a dairy producer shall annually file with the department an audited financial statement prepared by an independent certified public accountant or licensed public accountant in accordance with generally accepted accounting practices and principles, verified by the accountant as accurately representing business operations and financial conditions of the plant business for which the statement is rendered, prepared as of the close of the plant's most recent fiscal year. In lieu of filing an audited financial statement an applicant may file other forms of security as provided in section 4-30-03.3. All audited financial statements shall be reviewed by the Bank of North Dakota. All statements shall be confidential and shall not be open for public inspection. The department may require additional statements to be audited by a certified public accountant or a licensed public accountant.

SECTION 6. AMENDMENT. Section 4-30-03.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-03.3. Surety bond, trustee agreement, other security or assurances. In all cases where it appears that the financial condition of any applicant or licensee who purchases milk ~~or cream~~ from a dairy producer is not adequate to reasonably assure payment to dairy producers when due for the milk ~~or cream~~ to be purchased, or in lieu of annually filing with the department an audited financial statement as required in section 4-30-03.2, the department shall require from an applicant or licensee security or other assurances in one of the following forms:

1. The filing of a surety bond acceptable to the department. The amount of the surety bond must be determined on the basis of average purchases of milk ~~or cream~~ from dairy producers during the previous year. Where payment for milk ~~or cream~~ purchased from dairy producers is made on a weekly basis, the amount of the surety bond must be at least in an amount equal to the average weekly purchases of milk ~~or cream~~. Where payment for milk ~~or cream~~ purchased from dairy producers is made on a semimonthly basis, the amount of the surety bond must be at least in an amount equal to the average semimonthly purchases of milk ~~or cream~~. Where the period of payment for milk ~~or cream~~ purchased from dairy producers is made on a basis involving periods of time greater than semimonthly, the amount of the surety bond must be at least in an amount equal to the average purchases of milk ~~or cream~~ for that greater period of time. The amount of the bond for each period of payment must also include an amount equal to at least the average purchases for three days following the close of the period of payment. The amount of the surety bond of any licensee who pays assignments to creditors of a producer of milk ~~and cream~~ at a lesser frequency than the licensee pays the producer must also include an amount equal to the value of assignments from the prior payment period. The commissioner must be named as obligee, but the bond or draft must be held for the purpose of protecting, and for the benefit of, any dairy producer, and the full and complete payment to ~~the seller~~ that dairy producer for all milk ~~or cream~~ purchased by the licensee. The aggregate liability of the bonding company or the department to all dairy producers must in no event exceed the amount of the bond.

2. The providing of an amount of protection for dairy producers, from whom milk ~~or cream~~ is purchased, equal to the amount of protection provided in subsection 1, whereby the security is to be held by the department solely for the protection of dairy producers, in one or more of the following forms:
 - a. Cash deposited with a bank or trust company and held under an escrow agreement with the department.
 - b. Bonds of the United States deposited with the department.
 - c. Stocks, bonds, or other marketable securities at current market values, which securities have regularly reported quotations, deposited with the department.
 - d. A certified bank draft, certified check, irrevocable letter of credit, or certificate of deposit held in favor of the department.
3. The filing of an agreement providing for the complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the dairy producers. The trustee shall make and file a trustee's bond and contracts signed by the owner or operator and the purchaser of the dairy products requiring that payment for all dairy products sold be made to the trustee. The trustee shall maintain a separate bank account for that purpose and shall at least annually render a true and correct account of trustee dealings to the department and to the dairy producers.

SECTION 7. AMENDMENT. Section 4-30-03.4 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.4. Financial basis for license - Statement to producer - Notification to department. All milk ~~or cream~~ purchasers licensed under section 4-30-02 shall inform producers delivering milk ~~and cream~~ of the financial basis on which the license was issued including the type and amount of security, if any, filed under section 4-30-03.3 by a written statement to each producer patron at least once every year. No person may receive milk ~~or cream~~ which will increase the amount due and accrued beyond the amount represented as a basis for the issuance of a license without first notifying the department.

SECTION 8. AMENDMENT. Section 4-30-03.5 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.5. Additional security. Whenever the department determines that the value of milk ~~or cream~~ purchased or received from producers has increased or that an increase may reasonably be anticipated, so that the total amount of security does not comply with the amount required by subsection 1 or 2 of section 4-30-03.3, the department shall require additional security as will afford producers the protection intended by section 4-30-03.3. The department may suspend or revoke any license if the licensee fails to provide the additional security required by the department pursuant to this section.

SECTION 9. AMENDMENT. Section 4-30-03.6 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.6. Filing of security before license year. Surety bonds or other security for the license year must be filed with the department not later than the first day of the month before the beginning of each license year. If any applicant or licensee who purchases or receives milk ~~or cream~~ from dairy producers has not filed a surety bond or other security, and has not been relieved from filing a surety bond or other security, by the first day of the month of the license year, the department shall notify producers selling milk ~~or cream~~ to the applicant or licensee that the applicant or licensee has not filed any security or made other provisions for assuring payments for milk ~~or cream~~ purchases, for the license year.

SECTION 10. AMENDMENT. Section 4-30-03.7 of the North Dakota Century Code is amended and reenacted as follows:

4-30-03.7. Failure to file security - Notice to producers. Whenever an applicant or licensee fails to file a surety bond or other security within the time fixed by section 4-30-03.6 or the department's demand for additional security, the department shall publish in a newspaper or newspapers having circulation in the area or areas in which the producers whose milk ~~or cream~~ is sold or delivered to the applicant or licensee reside, a notice stating that the department made demand or request of the applicant or licensee; that the applicant or licensee has failed to comply; that the department does not have on file a surety bond or other security as demanded; and that adequate security to protect producers may not be available to them. In addition to published notice to producers, the department shall send by registered mail, a copy of the notice to each producer delivering milk ~~or cream~~ to the applicant or licensee as may be able to be determined from available records and the notice must be addressed to the producer's last known place of residence.

SECTION 11. AMENDMENT. Section 4-30-03.8 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-03.8. Out-of-state dealers, processors, or producers not exempt. Sections 4-30-03.1 through 4-30-03.10 apply to all milk ~~or cream~~ purchasers licensed under section 4-30-02 doing business in whole or in part within the state. The protection to producers afforded by sections 4-30-03.1 through 4-30-03.10 is available to the producers of any state selling milk ~~or cream~~ to any licensee licensed under section 4-30-02, but the surety bond or other security required by sections 4-30-03.3 and 4-30-03.5 is payable only for the benefit of producers who are located within this state.

SECTION 12. AMENDMENT. Section 4-30-13.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-13.1. Commissioner to investigate complaint. Upon receiving a ~~written~~ statement claiming that any provision of this chapter or the rules of the department have been violated, the commissioner shall investigate the complaint as thoroughly and as soon as possible and practicable. If the commissioner finds upon conducting such investigation that a provision of this chapter or the rules of the department have been violated, the commissioner may take any action deemed appropriate.

SECTION 13. AMENDMENT. Section 4-30-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-18. Sampling and testing procedures - Equipment - Supplies. The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, hauling, or testing of milk or milk products must conform to that

described in the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association, incorporated, a copy of which shall be on file in the department. No equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or milk products which is not in conformance with the requirements of this chapter may be sold or offered for sale. The commissioner through the adoption of rules may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, hauling, or testing procedures or equipment. The commissioner, where appropriate, may check calibration of farm bulk milk tanks and equipment.

SECTION 14. AMENDMENT. Section 4-30-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-20. Sampling of milk. Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association, incorporated. Records must be kept which readily identify the sample with those items used to determine payment for the milk. Such items must include: weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk. ~~All milk samples must be kept for at least twenty-four hours after testing has been completed.~~

SECTION 15. AMENDMENT. Section 4-30-36 of the 1999 Supplement to 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, ~~1989~~ 1999 Recommendations of the United States Public Health Service" 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 16. AMENDMENT. Section 4-30-36.2 of the 1999 Supplement to 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 - ~~1989~~ 1999 revision corrected Edition" and the sampling of milk and dairy products must be in accordance with the guidelines recommended in the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.

SECTION 17. AMENDMENT. Section 4-30-36.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines. The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the ~~latest~~ sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~1989~~ 1995 Edition".

SECTION 18. AMENDMENT. Section 4-30-36.4 of the 1999 Supplement to 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 ~~1989~~ 1999" and its supplements and follow the procedures standards set by "Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments 1999 revisions".

SECTION 19. AMENDMENT. Section 4-30-37 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-37. Quality records to be kept - Term. Adequate records for testing and grading in conformance with this chapter and the rules ~~and regulations~~ of the department must be kept by each business sampling or testing milk ~~or cream~~ for at least twelve months in a manner approved by the commissioner.

SECTION 20. AMENDMENT. Section 4-30-38 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-38. Transportation of milk ~~and cream~~ for manufacturing, processing, or bottling purposes - Commissioner to adopt rules. The commissioner may adopt rules governing the transportation of milk ~~and cream~~ to be used for manufacturing, processing, or bottling purposes. No facility or vehicle ~~shall~~ may be used or operated in violation of these rules.

SECTION 21. AMENDMENT. Section 4-30-47 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-47. Dispute over test - Official test made - By whom - Other tests - Fees. If a disagreement between a seller and a buyer or the legal representatives of both or either arises over the percentage of butterfat contained in any quantity of milk ~~or cream~~ sold or offered for sale at the request of the owner and in the owner's presence, a sample of such milk ~~or cream~~ obtained as provided in ~~sections 4-30-19 and section~~ section 4-30-20 and mutually agreed upon by the interested parties as being a representative sample, must be sealed satisfactorily and mailed by the buyer to the office of the dairy commissioner. There must accompany each sample a statement giving the name and address of the seller and the buyer of the milk ~~or cream~~ in question, the net weight thereof, the percentage and amount of butterfat contained therein, the price per pound [.45 kilogram] for butterfat, and the amount of money paid or offered in payment for the same and bearing the signature of the seller and the buyer. The commissioner or the commissioner's agent shall determine the percentage of butterfat contained in the sample and shall make a report of the result

in triplicate, the original to be filed in the commissioner's office, one copy to be sent to the seller, and one to the buyer of the milk ~~or cream~~. The percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made. The fee for the making of the official butterfat test and any other tests required must be in such amount as set by regulation of the dairy commissioner, considering the actual costs of making the test, and such fee must be mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat or other test.

SECTION 22. AMENDMENT. Section 4-30-48 of the 1999 Supplement to 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 ~~or cream~~ as provided in section 4-30-47, then the party selling or offering for sale such milk ~~or cream~~ may require that the buyer or prospective buyer forward to the department the sample taken in compliance with sections 4-30-19 and 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 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.

SECTION 23. REPEAL. Sections 4-30-19, 4-30-21, 4-30-22, 4-30-23, 4-30-24, 4-30-25, 4-30-26, and 4-30-42 of the North Dakota Century Code are repealed.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 73

SENATE BILL NO. 2172

(Senators Solberg, Nichols, Wanzek)
(Representatives Boehm, Huether, Nicholas)

BEEF PROMOTION AND BEEF COMMISSION

AN ACT to amend and reenact sections 4-34-01 and 4-34-03 of the North Dakota Century Code, relating to beef promotion and the qualifications of members of the North Dakota beef commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-34-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-34-01. Purposes. The purposes of this chapter are:

1. To provide and participate in programs to increase the consumption of domestic beef through such means as advertising, research, consumer information, industry information, sales promotion, and education, but at no time may false or unwarranted claims be made on behalf of the beef industry.
2. To support beef promotion, research, and education activities of the national beef promotion and marketing organizations ~~with not less than fifty percent of the assessments collected.~~
3. To initiate, encourage, and sponsor research designed to solve problems in the beef industry.
4. To enhance the sale and production of North Dakota beef cattle.

SECTION 2. AMENDMENT. Section 4-34-03 of the 1999 Supplement to 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 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.

3. Each member must ~~be~~:
 - a. Be a United States citizen and a resident of this state, ~~must be or have been~~;
 - 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, ~~i~~ and ~~must have~~
 - d. Have during that period derived a substantial portion of the member's income therefrom.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 74

SENATE BILL NO. 2167

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

PESTICIDE APPLICATORS

AN ACT to amend and reenact sections 4-35-05, 4-35-06, 4-35-08, 4-35-09, 4-35-13, 4-35-15, 4-35-19, and subsection 4 of section 4-35.1-01 of the North Dakota Century Code, relating to pesticide applicators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-05. Definitions. As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including, ~~but not limited to, man~~ humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first aid treatment.
- ~~2.4.~~ 3. "Applicator" means any person who applies a pesticide to land.
- ~~3.~~ 4. "Beneficial insects" means those insects ~~which~~ that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
- ~~4. a.~~ 5. "Certified applicator" means any individual who is certified under this chapter ~~as authorized to use any restricted use pesticide covered by the applicator's certification.~~ The term includes a commercial applicator and a private applicator.
 - ~~b.~~ "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
 - ~~6.~~
 6. "Commercial applicator" means a certified applicator, ~~whether or not the applicator is a private applicator with respect to some uses,~~ who uses any pesticide ~~which is classified for restricted use,~~ for any purpose or on any property, ~~other than as provided for by subdivision b~~ a private applicator.
 - ~~5.~~ 7. "Dealer" means any person who sells a pesticide to an end user.

- 6- 8. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
- 7- 9. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
- 8- 10. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than ~~man~~ human and other than bacteria, virus, or other micro-organism on or in living ~~man~~ humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.
- 9- 11. "Distribute" means to offer for sale, hold for sale, sell, barter, or supply pesticides in this state.
- 40- 12. "Environment" includes water, air, land, and all plants and ~~man~~ humans and other animals living therein, and the interrelationships which exist among these.
- 44- 13. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land, ~~but shall~~. The term does not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.
- 42- 14. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living ~~man~~ humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
- 43- 15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta, comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.
- 44- 16. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- 45- 17. "Labeling" means the label and all other written, printed, or graphic matter:
- a. Accompanying the pesticide or device; and
 - b. To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board; the United States environmental protection agency; the United States departments of agriculture and interior; the United States department of health and human services; state

agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.

46. 18. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.
47. 19. "Mixture" means a diluted pesticide combination.
48. 20. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
49. 21. "Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.
20. 22. "Pest" means:
- a. Any insect, snail, slug, rodent, nematode, fungus, weed; or
 - b. Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living ~~man~~ humans or other living animals which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.
24. 23. "Pesticide" means:
- a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
 - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
22. 24. "Pesticide dealer" means any person who distributes restricted use pesticides.
23. 25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
26. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use, to produce any agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

- ~~24.~~ 27. "Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.
- ~~25.~~ 28. "Public operator" means a certified applicator who applies restricted use pesticides as an employee of a state agency, municipal corporation, public utility, or other governmental agency.
- ~~26.~~ 29. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the board.
- ~~27.~~ 30. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing pesticide containers or from rinsing the inside and outside of spray equipment.
- ~~28.~~ 31. ~~"Snails or slugs" include all~~ "Snail" or "slug" includes every harmful mollusk mollusk.
- ~~29.~~ 32. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- ~~30.~~ 33. "Unreasonable adverse effects on the environment" means any unreasonable risk to ~~man~~ humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
- ~~34.~~ 34. "Weed" means any plant which grows where not wanted.
- ~~32.~~ 35. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including, ~~but not limited to,~~ mammals, birds, and aquatic life.

SECTION 2. AMENDMENT. Section 4-35-06 of the 1999 Supplement to 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 ~~the provisions of this chapter and has authority to issue regulations in conformance with provisions of~~ may adopt rules in accordance with chapter 28-32 to ~~carry out the provisions of~~ implement this chapter. ~~Such regulations~~ The rules may prescribe methods to be used in the application of pesticides. ~~Where the board finds that such regulations are necessary to carry out the purpose and intent of this chapter, such regulations~~ 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:
 - ~~a.~~ (1) Plants, including forage plants, on adjacent or nearby lands.
 - ~~b.~~ (2) Wildlife in the adjoining or nearby areas.

- e. (3) Fish and other aquatic life in waters in proximity to the area to be treated.
 - e. (4) Persons, animals, or beneficial insects.
 - b. In ~~issuing such regulations~~ 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, ~~pursuant to chapter 28-32,~~ restricted use classifications as determined by the federal environmental protection agency. The board may also by ~~regulation~~ 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 ~~restricted use~~ 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. ~~Regulations~~ 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. In order to comply with section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, the board ~~is authorized to~~ 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. ~~The board is authorized to make appropriate regulations, in accordance with chapter 28-32, for carrying out the provisions of this chapter, including, but not limited to, regulations providing~~ 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.
 7. c. ~~The board may by regulation identify "pests" under the guidelines of the definition of the term "pest" contained within~~ 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. AMENDMENT. Section 4-35-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-08. Classification of certificates. The board may classify commercial certificates to be issued under this chapter. ~~Such~~ The classifications may include

pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any applicator to apply ~~restricted use~~ pesticides or to the use of ~~restricted use~~ pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee if ~~such~~ the person desires to be certified in one or more of the classifications provided for by the board under ~~the~~ authority of this section.

SECTION 4. AMENDMENT. Section 4-35-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-09. Commercial applicator's certification.

1. ~~No person who would be a~~ A commercial applicator if ~~certified~~ may not purchase or use a ~~restricted use~~ 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 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 ~~he~~ for which the applicant has applied for, 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 ~~in~~.
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 applicators for the use of ~~restricted use~~ pesticides.

SECTION 5. AMENDMENT. Section 4-35-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-13. Application of act to governmental entities. All ~~federal agencies, state agencies, municipal corporations, and any other governmental agencies, or~~ and public utilities, are subject to this chapter and rules adopted ~~thereunder~~ concerning the application of restricted use pesticides to implement this chapter.

SECTION 6. AMENDMENT. Section 4-35-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-15. Unlawful acts - Grounds for denial, suspension, or revocation of a certification. The commissioner ~~may~~, after providing an opportunity for a hearing, may deny, suspend, revoke, or modify any provision of any certification

issued under this chapter, if the commissioner finds that the applicant or the holder of a the certification has committed any ~~of the acts enumerated~~ act listed in this section. Each of the following acts is a violation of this chapter, whether committed by an applicant, by the holder of the certification, or by any other person applying or using pesticides, if the person:

1. Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification.
2. Made a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Applied materials known by that person to be ineffective or improper.
4. Operated faulty or unsafe equipment.
5. Operated in a faulty, careless, or negligent manner.
6. Neglected, or, after notice, refused to comply with ~~the provisions of~~ this chapter, the rules adopted ~~hereunder~~ to implement this chapter, or ~~of~~ any lawful order of the commissioner.
7. Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required.
8. Made false or fraudulent records, invoices, or reports.
9. Operated unlicensed equipment in violation of section 4-35-17.
10. Used fraud or misrepresentation in making an application for, or for renewal of, certification.
11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification.
12. Aided or abetted a certified or an uncertified person to evade the provisions of this chapter, conspired with such a certified or an uncertified person to evade the provisions of this chapter, or allowed the person's certification to be used by another person.
13. Knowingly made false statements during or after an inspection or an investigation.
14. Impersonated ~~any~~ a federal, state, county, or city inspector or official.
15. Distributed any restricted use pesticide to any person who is required by law or rule to be certified to use or purchase ~~such~~ the restricted use pesticide unless ~~such~~ the person or ~~his~~ agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.
16. Bought, used, or supervised the use of any ~~restricted use~~ pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted ~~therefrom~~.

17. Applied any economic poison ~~which~~ that is not registered pursuant to ~~the provisions of~~ chapter 19-18.

SECTION 7. AMENDMENT. Section 4-35-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-19. Exemptions.

1. The certification requirements of this chapter do not apply to ~~any a~~ competent person applying general use pesticides that are not classified for restricted use under the direct supervision of a commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is deemed to be applied under the direct supervision of a commercial applicator if the pesticide is applied by a competent person acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied. Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified.
2. ~~The provisions certification requirements of this chapter relating to certification requirements~~ do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide ~~labeling~~ label requires that a certified applicator personally ~~applies~~ apply the particular pesticide. A pesticide is ~~considered~~ deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the ~~instructions~~ instruction and control of a private applicator who is available if and when needed, even though ~~such~~ the private applicator is not physically present at the time and place that the pesticide is applied.
3. ~~2. Persons~~ The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides and doctors or to a doctor of medicine and doctors or a doctor of veterinary medicine applying pesticides as drugs a pesticide as a drug or as medication during the course of their normal practice.

SECTION 8. AMENDMENT. Subsection 4 of section 4-35.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Pesticide" means that term ~~as defined by subsection 24 of~~ in section 4-35-05.

Approved April 27, 2001
Filed April 27, 2001

CHAPTER 75

HOUSE BILL NO. 1328

(Representatives Brandenburg, D. Johnson, Nelson, Nicholas)
(Senators Christmann, Wanzek)

CROP PROTECTION PRODUCT HARMONIZATION AND REGISTRATION BOARD

AN ACT to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to creation of a crop protection product harmonization and registration board; to amend and reenact sections 4-35-06.2 and 4-35-06.3 of the North Dakota Century Code, relating to funds received for expenses paid relating to the registration of pesticides and the minor use pesticide fund; to repeal section 11 of chapter 31 of the 1999 Session Laws, relating to the crop harmonization committee; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-06.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-06.2. Commissioner of agriculture - Pesticide control Crop protection product harmonization and registration board - Recovery of funds. ~~The commissioner of agriculture~~ crop protection product harmonization and registration board may accept, ~~on behalf of the pesticide control board,~~ funds received for expenses paid ~~by the pesticide control board~~ relating to the registration of pesticides or donations offered to or for the benefit of the ~~pesticide control board~~. All moneys received under this section must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which they are given. ~~The pesticide control board~~ shall attempt, whenever possible, to recover funds expended relating to the registration of pesticides and shall adopt rules to administer ~~provisions of~~ this section.

SECTION 2. AMENDMENT. Section 4-35-06.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-06.3. Minor use pesticide fund - Continuing appropriation. The minor use pesticide fund is created as a special fund in the state treasury. All moneys in the fund are appropriated on a continuing basis to the ~~pesticide control~~ crop protection product harmonization and registration board for the purpose of conducting or commissioning studies, investigations, and evaluations regarding the registration and use of pesticides for minor crops, minor uses, and other uses as determined by the board.

³⁶ **SECTION 3.** A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

³⁶ Section 4-35-30 was amended by section 3 of House Bill No. 1009, chapter 9.

Crop protection product harmonization and registration board - Duties -**Grants.**

1. The crop protection product harmonization and registration board consists of the governor or the governor's designee, the agriculture commissioner, the chairman of the house agriculture committee, the chairman of the senate agriculture committee, one crop protection product manufacturing industry representative appointed by the chairman of the legislative council, and two consumers of crop protection products appointed by the governor. The governor or the governor's designee shall serve as chairman of the board. The board shall:
 - a. Identify and prioritize crop protection product labeling needs;
 - b. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a];
 - c. Identify the data necessary to enable registration of a use to occur in a timely manner;
 - d. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section;
 - e. Request the agriculture commissioner to pursue specific research funding options from public and private sources;
 - f. Request the North Dakota state university agricultural experiment station to pursue specific research to coordinate registration efforts; and
 - g. Pursue any opportunities to make more crop protection product options available to agricultural producers in this state through any means the board determines advisable.
2. The board may contract with a consultant to conduct studies or provide research or information regarding crop protection product registration and labeling needs.
3. The board may administer a grant program through which agriculture commodity groups established under this title may apply for funds to be used by the groups to address issues related to the registration of crop protection products. To be eligible for receipt of a grant, an applicant must submit an application to the board which requests a specific amount of funds, specifies the exact purposes for which the grant would be used, and provides a detailed timetable for the use of the grant funds. The board may impose any additional conditions it determines appropriate for grant recipients, including requiring periodic reports and furnishing of matching funds. The board may terminate funding of a previously approved grant at any time if the board is dissatisfied with the performance of the grant recipient.
4. The board may use not more than fifteen percent of the funds under its supervision for administrative purposes, including the cost of contracting for administrative services and reimbursement of board member expenses. The members of the board who are members of the

legislative assembly are entitled to compensation from the legislative council for attendance at board meetings at the rate provided for members of the legislative assembly for attendance at interim committee meetings and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

5. The board may adopt rules to implement this section.

SECTION 4. REPEAL. Section 11 of chapter 31 of the 1999 Session Laws is repealed.

SECTION 5. 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, and from special funds derived from grants or donation income, the sum of \$200,000, or so much of the sum as may be necessary, to the crop protection product harmonization and registration board for the purposes of addressing crop protection product registration and labeling needs and providing grants as provided in section 3 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 76

SENATE BILL NO. 2419

(Senators Nichols, Kroeplin)

PESTICIDE APPLICATOR FINANCIAL RESPONSIBILITY

AN ACT to amend and reenact section 4-35-09.1 of the North Dakota Century Code, relating to proof of financial responsibility for commercial pesticide applicators; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-09.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-35-09.1. Proof of financial responsibility - Exceptions.

1. A commercial pesticide applicator certificate may not be issued or renewed unless the applicant furnishes proof of financial responsibility as provided in this section. A commercial pesticide applicator shall furnish proof of financial responsibility on demand to the agriculture commissioner as provided in this section. Minimum financial responsibility must be ~~demonstrated annually~~ maintained in the amount of one hundred thousand dollars, and may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. The agriculture commissioner ~~must~~ shall immediately ~~request the suspension of~~ suspend the certification of a person who fails to maintain the minimum financial responsibility standards of this section. If there is any recovery against the certificate holder, the holder ~~must~~ shall demonstrate continued compliance with the minimum standards of this section. An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section. An application for reinstatement of a suspended certificate under this section must be accompanied by proof of satisfaction of any judgment previously rendered.
2. This section does not apply to:
 - a. A rancher who is required to obtain a commercial pesticide applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - b. A grazing association and its members if either the association or any member is required to obtain a commercial pesticide applicator

certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.

- c. A person required to be certified in the right-of-way category.
- d. An applicator who holds a commercial pesticide certificate and is controlling noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.

SECTION 2. LEGISLATIVE COUNCIL STUDY - FINANCIAL RESPONSIBILITY REQUIREMENTS FOR COMMERCIAL PESTICIDE APPLICATORS. The legislative council shall consider studying issues regarding financial responsibility requirements for commercial pesticide applicators. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 77

SENATE BILL NO. 2110

(Senators Wanzek, Tomac)

(Representatives Aarsvold, Nicholas)

(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, and two individuals representing farm organizations, all of whom must be selected by the agriculture commissioner, the agriculture commissioner shall continue to implement the project authorized by section 1 of chapter 63 of the 1999 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 agriculture 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, 2002, the agriculture 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-eighth legislative assembly.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 78

HOUSE BILL NO. 1349

(Representatives Nelson, Nicholas, Onstad)
(Senators Tomac, Wanzek)

AGRICULTURE IN CLASSROOM COUNCIL COMPOSITION

AN ACT to amend and reenact section 4-37-02 of the North Dakota Century Code, relating to the agriculture in the classroom council; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-37-02 of the North Dakota Century Code is amended and reenacted as follows:

4-37-02. Agriculture in the classroom council. An agriculture in the classroom council is hereby established. The council consists of ~~twelve~~ sixteen members to be appointed by the agriculture commissioner ~~of agriculture~~. One member must be the agriculture commissioner ~~of agriculture~~ or the commissioner's designee, and one member must be the superintendent of public instruction or the superintendent's designee.

SECTION 2. APPROPRIATION - REFUND FUND TRANSFER. There is appropriated out of any moneys in the attorney general refund fund from lawsuit settlement collections in the state treasury, not otherwise appropriated, the sum of \$75,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of developing and expanding agriculture in the classroom curricula, for the biennium beginning July 1, 2001, and ending June 30, 2003. The funds appropriated from the attorney general refund fund must be transferred to the department of agriculture operating fund as requested by the agriculture commissioner.

Approved April 13, 2001
Filed April 16, 2001

CHAPTER 79

SENATE BILL NO. 2235 (Senators Wanzek, G. Nelson, Nichols) (Representatives Belter, Berg, Pollert)

SEED AND CROP INSPECTION

AN ACT to create and enact a new chapter to title 4 of the North Dakota Century Code, relating to the inspection, analysis, and verification of seeds and crops; and to provide for a report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Analysis" means the laboratory examination of seeds, crops, or plant tissue to determine the genetic identity or physical traits of the seeds or crops.
2. "Commission" means the state seed commission.
3. "Commissioner" means the state seed commissioner.
4. "Department" means the state seed department.
5. "Inspection" means a visual field inspection of seeds or crops.

Commissioner - Genetic identity - Physical traits - Analysis and verification. The commissioner shall establish procedures for inspecting, analyzing, and verifying the genetic identity or physical traits of seeds or crops. The procedures must address the compilation of all necessary documentation and other administrative functions.

Inspection and analysis - Procurement of samples. The commissioner may inspect and analyze seed or crop grown, sold, or otherwise situated in this state to determine and verify the genetic identity or physical traits of the seed or the crop. The commissioner may procure samples of seed or crop grown in this state, sold in this state, or otherwise situated in this state or may accept for analysis and verification samples submitted from any public or nonpublic entity that is the owner of the seed or crop. The commissioner shall determine the size and nature of each sample to be submitted to the laboratory, the manner in which each sample is to be taken, the purposes for which each sample is to be taken, the manner in which each sample's identity is to be preserved, and the manner in which each sample is to be delivered to the laboratory.

Field inspections. The commissioner shall determine the criteria for field inspections.

Inspection and analysis - Fee. The commissioner, with the approval of the commission, shall establish and charge a fee for inspecting, analyzing, and performing any other services permitted by this chapter.

Laboratories and facilities. The commissioner shall provide and maintain laboratories and other facilities necessary to conduct the analyses authorized by this chapter and to effect any other work necessary to implement this chapter.

Identity preservation - Segregation - Traceability. The commissioner shall establish a procedure for the identity preservation, segregation, and traceability of seeds or crops inspected or analyzed under this chapter.

Labels - Documentation. The commissioner shall prescribe the type of labels and other identifying documentation to be affixed by the commissioner to seeds or crops inspected and analyzed under this chapter. All labels and other identifying documentation affixed by the commissioner must clearly bear the identification of the department and may be used only by the commissioner in conjunction with the verification services provided under this chapter.

Contract for services - Protection of growers. The commissioner may contract with any public or private entity to provide protection, inspection, analysis, or verification of seeds or crops, as provided by this chapter.

Deposit of fees - Investment. The commissioner shall deposit all moneys arising from the collection of fees under this chapter with the state treasurer for credit to the seed department revolving fund. At the direction of the commission, the state treasurer shall provide for the investment of available moneys from the revolving fund. The state treasurer shall deposit twenty percent of the income from the investment of the moneys in the general fund and the remaining eighty percent of the investment income in the seed department revolving fund.

Warranties regarding seeds or crops. The commission, the commissioner, and the department make no warranties of any kind, either expressed or implied, including warranties of merchantability, fitness for a particular purpose, or absence of disease, as to seed or crop that is inspected, analyzed, or verified under this chapter.

SECTION 2. STATE SEED COMMISSIONER - REPORT. Before July 1, 2002, the state seed commissioner shall present a report to the legislative council regarding the regional, national, and international status of genetically enhanced or modified seeds and crops, with attention to the ecological, environmental, health, and marketing aspects of genetically enhanced or modified seeds and crops.

Approved March 28, 2001
Filed March 28, 2001

CHAPTER 80

HOUSE BILL NO. 1417

(Representatives Kempenich, Boucher, Lemieux)
(Senator Tomac)

MEATPACKING PLANT BONDS

AN ACT to create and enact a new chapter to title 4 of the North Dakota Century Code, relating to a loan program and the issuance of revenue bonds or other evidences of indebtedness by the industrial commission of North Dakota for the establishment of meatpacking plants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Bank" means the Bank of North Dakota.
2. "Bonds" means revenue bonds or other evidences of indebtedness issued by the commission under this chapter.
3. "Commission" means the industrial commission.

Powers. The commission may:

1. Contract for the performance of its duties and functions under this chapter.
2. Sue and be sued.
3. Borrow money through the issuance and sale of bonds as provided under this chapter.
4. Invest proceeds of its bonds not needed for immediate disbursement, including any reserve funds, in securities the commission determines to be prudent, subject to any agreements with the holders of the commission's bonds.
5. Procure insurance, a guaranty, or a letter of credit for the payment of its bonds, including the payment of premiums or other fees, from any public or private entity.
6. Make loans to persons establishing meatpacking plants in this state through the loan program provided for under this chapter and charge the borrowers fees approved by the commission.
7. Prescribe and approve the forms and procedures for loan applications under this chapter by persons establishing a meatpacking plant in this state.

8. Prescribe the terms and conditions of loans to be made under this chapter.
9. Consent to any changes in the terms or provisions of its bonds, or of any other contract to which the commission is a party, subject to any contracts with the holders of the commission's bonds.
10. Purchase bonds issued under this chapter out of any funds available to the commission for such purpose and not pledged to or necessary for some other purpose, and hold, cancel, or sell the bonds, subject to any contracts with its bondholders.

Bank of North Dakota. The commission may delegate to the Bank, and the Bank is authorized to exercise, all administrative powers granted to the commission under this chapter, including processing and reviewing applications for, and closing and servicing loans made to, persons establishing meatpacking plants in this state.

Issuance and sale of bonds - Use of bond proceeds. The commission may issue its bonds in such principal amounts as the commission determines is necessary to provide sufficient funds to perform its powers under this chapter. The proceeds may not be used other than to make loans, pay the costs of bond issuance, pay accrued or capitalized interest or capitalized principal, and provide any reasonably required reserve funds. The bonds must be authorized by resolution of the commission and must bear such date, mature at such times, bear interest at such rates, be in such denominations, be payable from such sources, and be subject to such terms of redemption as may be provided by the resolution. The bonds may be sold by the commission at public or private sale at the times and at the prices allowed by the commission. The commission may provide for refunding or refinancing of the bonds.

Agreement with bondholders. Any resolution of the commission authorizing the issuance of bonds under this chapter may contain contractual provisions:

1. Setting aside of reserves or sinking funds.
2. Limiting the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds.
3. Limiting the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds.
4. Providing the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to such amendment or abrogation, and the manner in which the consent may be given.
5. Vesting in a trustee such property, rights, powers, and duties in trust as the commission may determine, and limiting or abrogating the right of bondholders to appoint a trustee, or limiting the rights, powers, and duties of the trustee.
6. Defining the acts or omissions, which constitute a default of the obligations and duties of the commission to the bondholders, and

providing for the rights and remedies of the bondholders in the event of a default, provided that the rights and remedies must be consistent with the laws of this state.

7. Including any other matter that affects the security or protection of the bondholders.

Reserve fund.

1. The commission shall establish and maintain a reserve fund for bonds issued under this chapter. The commission shall deposit in the reserve fund:
 - a. All bond proceeds required to be deposited in the reserve fund by the terms of any contract between the commission and the bondholders or by the terms of any resolution of the commission concerning the use of bond proceeds.
 - b. All moneys made available to the commission for deposit in the reserve fund.
2. Moneys in the reserve fund may not be used other than to make payments of the principal and interest on bonds, including any premium required to be paid when bonds are redeemed prior to maturity, and sinking fund installments as they become due and payable.
3. Moneys in the reserve fund may be withdrawn in accordance with the terms of any contract between the commission and the bondholders or any resolution of the commission concerning the use of bond proceeds.

Exemption from state and local taxes. All bonds issued under this chapter and the interest and income payable to and received by bondholders are exempt from taxation by the state or any political subdivision of the state.

Payment of bonds. Bonds issued under this chapter by the commission are not obligations or debt of the state, and are payable solely from revenues or other funds available to the commission under this chapter. The bonds do not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the commission or the Bank, other than the revenues and property pledged under this chapter. Each bond issued under this chapter must contain a statement that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or interest on the bond.

Legal investments. Bonds issued under this chapter by the commission are legal investments in which all public officers or public bodies of the state, its political subdivisions, and all banks organized under the laws of the state and engaged in the business of banking may invest funds.

Validity. Bonds issued under this chapter must be executed by a member of the commission or by facsimile signature and the manual signature of an authenticating agent. Any bond bearing the signature of a member of the commission in office on the date of execution is valid for all purposes for which it was issued. After issuance, all bonds issued under this chapter by the commission

are conclusively presumed to be fully authorized and issued under the laws of the state, and any person is estopped from questioning their authorization, issuance, execution, sale, or delivery by the commission.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 81**HOUSE BILL NO. 1338**

(Representatives Mueller, Brandenburg, Nelson)
(Senators Kroeplin, Urlacher)

GENETIC MODIFICATION STUDY

AN ACT to provide for a legislative council study of issues related to genetic modification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY OF ISSUES RELATED TO GENETIC MODIFICATION. The legislative council shall consider studying issues related to genetic modification, including impacts on health, the environment, the food supply, product labeling, and actions by other jurisdictions regarding experimental medicine and research, and the promulgation of accurate information regarding genetic modification efforts that exist or are expected to exist in the near future. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 26, 2001
Filed April 26, 2001

CHAPTER 82

HOUSE BILL NO. 1390

(Representatives Gulleason, Brandenburg, Monson, Mueller, Nicholas)
(Senator Lindaas)

BIODIESEL FUEL STUDY

AN ACT to provide a legislative council study of biodiesel fuel and its integration into the agricultural economy of this state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall study the use of biodiesel fuel in this state. The study must include analysis of biodiesel fuel's operational impact on engines, its impact on engine warranties, its fuel economy, the impact its use would have on the state, the economic impact its use would have on the agricultural and general business communities, its environmental benefits, methods of better marketing biodiesel fuel by the agricultural and industrial communities, the potential for public use by the state and its political subdivisions, its benefit in cold flow conditions, microbial impacts of its usage, the demand for biodiesel fuel, tax incentives to promote the use of biodiesel fuel, and the current supply and potential for biodiesel plants in or near this state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 83**SENATE BILL NO. 2282**
(Senators Thane, Tallackson, Wanzek)
(Representatives Eckre, Koppang)**ETHANOL PRODUCTION AND CONSUMPTION STUDY**

AN ACT to provide for a legislative council study of methods to encourage production and consumption of ethanol.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying methods to encourage production and consumption of ethanol. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 23, 2001
Filed April 23, 2001

ALCOHOLIC BEVERAGES

CHAPTER 84

SENATE BILL NO. 2053

(Senators Solberg, Lee, Lyson)
(Representatives Brusegaard, Pollert, Wald)

BEER AND LIQUOR TAX COLLECTION TRANSFER

AN ACT to create and enact a new section to chapter 5-03 of the North Dakota Century Code, relating to deposit of taxes and fees from beer and liquor wholesalers in the state general fund; to amend and reenact sections 2-05-15.1, 5-01-04, 5-01-11, 5-01-16, 5-03-01, 5-03-01.1, 5-03-01.2, 5-03-02, 5-03-04, 5-03-05, 5-03-06, 5-03-06.1, 57-32-03, 57-32-04, 57-32-05, and 57-32-06 of the North Dakota Century Code, relating to transfer of tax collection responsibilities from the state treasurer to the state tax commissioner; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-05-15.1 of the North Dakota Century Code is amended and reenacted as follows:

2-05-15.1. Bond required. Before issuance or transfer of any common carrier certificate by aircraft as provided for in section 2-05-15 to any entity, the North Dakota aeronautics commission shall require such entity to post a bond issued by a licensed surety company, or in cash with the North Dakota aeronautics commission payable to the North Dakota aeronautics commission as trustee for the state ~~treasurer~~ tax commissioner, in an amount equal to the estimated annual ~~utility~~ taxes to be assessed upon such air transportation entity and assessed and collected pursuant to chapters 57-06, 57-07, 57-08, 57-13, and 57-32; ~~as amended~~, for each calendar year that such air transportation entity holds a common carrier certificate issued or transferred to it by the state aeronautics commission, authorizing such holder to engage in the business of common carrier by aircraft operating on a definite schedule between fixed termini in North Dakota. The state aeronautics commission shall consult with the state tax commissioner and such air transportation entity to determine the estimated annual ~~utility~~ taxes to be assessed to each such air transportation entity and the state aeronautics commission shall set the bond amount based on reasonable estimates. The bond amount posted and required for each such air transportation entity must be secured by the state aeronautics commission, after such ~~utility~~ taxes become delinquent, in an amount equal to such ~~utility~~ taxes and penalties and the state aeronautics commission shall pay such proceeds to the state ~~treasurer~~ tax commissioner, after the state ~~treasurer~~ tax commissioner has notified the state aeronautics commission in writing that the ~~utility~~ taxes on such air transportation entity are delinquent and unpaid with the amount of taxes and penalties due. In the event such air transportation entity fails to sufficiently maintain its bond at any time, the state aeronautics commission shall take action to revoke any common carrier certificate by aircraft that such air transportation entity holds that was issued by the North Dakota aeronautics commission.

SECTION 2. AMENDMENT. Section 5-01-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-04. Manufacture of alcoholic beverages prohibited - Exceptions. A person may manufacture malt beverages and wine for personal or family use, and not for sale, without securing a license if the amount manufactured is within quantities allowed by the bureau of alcohol, tobacco and firearms of the United States treasury department. Any person manufacturing alcoholic beverages within this state in quantities greater than those permitted by the United States treasury department, is guilty of a class A misdemeanor and property used for same is subject to disposition by the court except any person may establish a brewery for the manufacture of malt beverages or a distillery or other plant for the distilling, manufacturing, or processing of liquor within this state if the person has secured a license from the state ~~treasurer~~ tax commissioner. Such license must be issued on a calendar-year basis with a fee of five hundred dollars. A first-time license fee may be reduced twenty-five percent for each full quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the state ~~treasurer~~ tax commissioner. A license may not be issued for any period for a fee less than one-half of the annual license fee. Said license shall allow sale to only licensed wholesalers.

SECTION 3. AMENDMENT. Section 5-01-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-11. Unfair competition - Penalty. A manufacturer may not have any financial interest in any wholesale alcoholic beverage business. A manufacturer or wholesaler may not have any financial interest in any retail alcoholic beverage establishment and may not furnish any such retailer with anything of value. A retailer may not have any financial interest in any manufacturer, supplier, or wholesaler. A wholesaler may:

1. Extend normal commercial credits to retailers for industry products sold to them. The state ~~treasurer~~ tax commissioner may determine by ~~regulation~~ rule the definition of "normal commercial credits" for each segment of the industry.
2. Furnish retailers with beer containers and equipment for dispensing of tap beer if the expense does not exceed fifty dollars per tap per calendar year.
3. Furnish outside signs to retailers if the sign cost does not exceed one hundred dollars exclusive of costs of erection and repair.
4. Furnish miscellaneous materials to retailers not to exceed one hundred dollars per year. "Miscellaneous materials" not subject to this limitation include any indoor point-of-sale items for retail placement. Point-of-sale items include back bar signs, pool table lights, neon window signs, and items of a similar nature. The point-of-sale items must be limited to two hundred fifty dollars per retail account from the wholesaler for each of the wholesaler's brewers or suppliers. The state ~~treasurer~~ tax commissioner may, to keep current with market conditions, adjust the limitation amount for the point-of-sale items on an annual basis upon consultation with representatives of the alcohol beverage industry.

Any wholesaler, retailer, or manufacturer violating this section, or any rule adopted to implement this section, and any retailer receiving benefits thereby, is guilty of a class

A misdemeanor. A microbrew pub is exempt from the provisions of this section to the extent that this section restricts the coownership of a manufacturer's license and a retail license for the purpose of a microbrew pub.

³⁷ **SECTION 4. AMENDMENT.** Section 5-01-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-16. Direct sale from out-of-state seller to consumer - Penalty.

1. No person in the business of selling alcoholic beverages may knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.
2. No person in the business of transporting goods may knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state ~~treasurer~~ tax commissioner shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.
4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.

This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state 2.38 gallons [9 liters] or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer per month for personal use and not for resale from a person as described under subsection 1 or 2. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state.

SECTION 5. AMENDMENT. Section 5-03-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-01. State wholesale license required - Qualifications - Penalty - Exception. Before any person engages in the sale at wholesale of beer or liquor in this state, that person shall first procure a license from only the state ~~treasurer~~ tax commissioner. A lender who acquires an inventory of beer or liquor by reason of foreclosure of a security interest in the inventory is exempt from obtaining a license before the sale of the inventory. The lender shall offer the inventory for sale first to the wholesaler. A lender who forecloses upon a security interest in beer inventory

³⁷ Section 5-01-16 was also amended by section 2 of Senate Bill No. 2397, chapter 86.

for which the lender has a security interest shall dispose of the beer inventory within ninety days of obtaining possession of the inventory. The license must only allow sale to licensed retailers, licensed wholesalers, regular retail outlets on federal military reservations, and sale for export from a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse. No license may be issued unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. If the applicant is not a corporation, the applicant must be a citizen of the United States and a resident of this state and a person of good moral character. If the applicant is a corporation, the manager of the licensed premises must be a resident of this state, a citizen of the United States, and a person of good moral character, and the officers, directors, and stockholders must be citizens of the United States and persons of good moral character. Corporate applicants must first be properly registered with the secretary of state.
2. The state ~~treasurer~~ tax commissioner may require the applicant to set forth other information necessary to enable the state ~~treasurer~~ tax commissioner to determine if a license should be granted.
3. A person is not eligible for such a license unless that person has a warehouse and office in this state, in which is kept a complete set of records relative to that person's alcoholic beverage transactions in this state.
4. The applicant may not have any financial interest in any retail alcoholic beverage business.
5. The provisions of this section relating to warehousing do not apply to a wholesaler of beer located in an adjoining state that permits wholesalers licensed in North Dakota to deliver beer to retailers without warehousing in that state.

Any person distributing alcoholic beverages in this state without compliance with this title is guilty of a class B misdemeanor.

SECTION 6. AMENDMENT. Section 5-03-01.1 of the North Dakota Century Code is amended and reenacted as follows:

5-03-01.1. Conviction not bar to licensure - Exceptions. Conviction of an offense shall not disqualify a person from licensure under this chapter unless the state ~~treasurer~~ tax commissioner determines that the offense has a direct bearing upon a person's ability to serve the public as a beer or liquor wholesaler, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 7. AMENDMENT. Section 5-03-01.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-01.2. Brand registration - Penalty. Before any brand of alcoholic beverage may be offered for sale in this state, the primary source of supply for the brand must register the brand annually with the state ~~treasurer~~ tax commissioner. Only registered brands may be sold or transported within the state. Only licensed wholesalers may purchase registered brands from the primary source of supply. A brand is defined as having the same characteristics as required by the bureau of

alcohol, tobacco and firearms of the United States treasury department for certification of label or bottle approval. A violation of this section is a class B misdemeanor.

The state ~~treasurer~~ tax commissioner may adopt rules and prescribe the necessary forms to administer this section.

SECTION 8. AMENDMENT. Section 5-03-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-02. Fees. The fee for an annual wholesale liquor license is one thousand dollars. The fee for an annual wholesale beer license is two hundred dollars. Fees must be reduced twenty-five percent for each full quarter of a year elapsed between the first day of the year for which the license is issued and the date on which the application for the license is filed with the state ~~treasurer~~ tax commissioner. When an application clearly indicates that the applicant does not desire to exercise the privileges granted by the license applied for until on or after the beginning of the quarterly period following the quarterly period in which the application is filed with the department, the fees must be reduced twenty-five percent for each full quarter of a year elapsing between the first day of the year for which the license is issued and the date indicated on the application. A license may not be issued for any period for a fee less than one-half of the annual license fee.

SECTION 9. AMENDMENT. Section 5-03-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-04. Collection of taxes. The taxes imposed by this chapter are payable as follows:

1. Except as provided in subsection 3, wholesalers shall pay the tax to the state ~~treasurer~~ tax commissioner on or before the fifteenth day of each month.
2. Liquor wholesalers shall make the payments based on the total gallonage sold the preceding calendar month. Beer wholesalers shall make the payments based on the total gallonage purchased from brewers the preceding calendar month. Microbrew pubs shall make payments based on the total gallonage sold on premises during the preceding calendar month.
3. Sales of alcoholic beverages for export through a federally bonded warehouse, or a foreign trade zone, to an export bonded warehouse are excluded from the computation of the gallonage tax. If the alcoholic beverages are returned to this state from the federally bonded warehouse, the foreign trade zone, or the export bonded warehouse, the exemption no longer applies.
4. Upon satisfactory proof, a tax credit is allowed beer wholesalers for beer purchased, but which cannot be sold in this state. A tax credit is allowed wholesalers on bad accounts which are charged off for income tax purposes, but a pro rata tax is again payable on any accounts subsequently collected.
5. If any wholesaler makes an overpayment of taxes due, the state ~~treasurer~~ tax commissioner shall issue a credit applicable to future

obligations or certify that amount to the office of management and budget for a refund.

6. Any remittance within one dollar of the correct amount due may be accepted by the state ~~treasurer~~ tax commissioner as the correct amount due.

³⁸ **SECTION 10. AMENDMENT.** Section 5-03-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-05. ~~Treasurer~~ Tax commissioner to enact regulations adopt rules - Appeal. The state ~~treasurer~~ tax commissioner, pursuant to chapter 28-32, shall adopt rules ~~and regulations~~ governing retailers, wholesalers, and manufacturers necessary to carry out the provisions of this title and to ensure efficient collection of beer and liquor taxes. All decisions of the state ~~treasurer~~ tax commissioner are subject to court review.

SECTION 11. AMENDMENT. Section 5-03-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-06. Examination by ~~treasurer~~ tax commissioner - Penalty for improper returns. The state ~~treasurer~~ tax commissioner may at any reasonable time make an examination of the books and premises of any retailer, wholesaler, manufacturer, microbrew pub, or other person to determine if such person has fully complied with all statutes and ~~regulations~~ rules pertaining to the person's business. If any wholesaler or microbrew pub liable for any taxes imposed by this chapter fails to pay such tax on the date payment is due, there must be added to the tax five percent per month of the total amount of the tax unpaid from the due date of payment until paid. Any wholesaler or microbrew pub failing to furnish reports when required must be assessed a penalty of one hundred dollars for each day such reports are delinquent. The state ~~treasurer~~ tax commissioner may forgive all or part of any penalty for good cause shown. If any wholesaler or microbrew pub files a fraudulent return, there must be added to the tax an amount equal to the tax evaded or attempted to be evaded and such wholesaler or microbrew pub is also guilty of a class C felony. All such taxes and civil penalties may be collected by assessment or distraint, and no court of this state may enjoin the collection of any such tax or civil penalty. No wholesaler may purchase alcoholic beverages from a manufacturer after notice from the state ~~treasurer~~ tax commissioner that such manufacturer has failed to file required reports with ~~his~~ the tax commissioner's office. Any wholesaler or microbrew pub may have ~~his~~ its license suspended or revoked for violation of any of the provisions of this title after a hearing conducted similar to that prescribed by this law.

SECTION 12. AMENDMENT. Section 5-03-06.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-06.1. Hearing on alleged violations - Denial of license. On licenses that are renewable annually, the state ~~treasurer~~ tax commissioner may not revoke or suspend a license or deny a renewal prior to conducting a hearing in accordance with chapter 28-32.

³⁸ Section 5-03-05 was also amended by section 4 of Senate Bill No. 2397, chapter 86.

SECTION 13. A new section to chapter 5-03 of the North Dakota Century Code is created and enacted as follows:

Taxes and fees deposited in the general fund. All moneys collected by the tax commissioner under this chapter must be transferred to the state treasurer, within ten days after the end of the month in which they were collected, and deposited in the state general fund.

SECTION 14. AMENDMENT. Section 57-32-03 of the North Dakota Century Code is amended and reenacted as follows:

57-32-03. Tax ~~certified to~~ statements prepared by state treasurer tax commissioner - When due and delinquent. On or before the thirty-first day of March in each year, the tax commissioner shall ~~file with the state treasurer a certified list of all companies~~ provide each company assessed under the provisions of this chapter a statement of its taxes due for the preceding year, ~~together~~ with the valuations and taxes assessed in each case. Such taxes are due upon the fifteenth day of April next following the date of ~~certification~~ the statement of taxes due. The taxes become delinquent on the first day of May next following the due date and, if not paid on or before said date, are subject to a penalty of two percent and, on June first following delinquency, an additional penalty of two percent and, on July first following delinquency, an additional penalty of two percent and, an additional penalty of two percent on October fifteenth following delinquency. From and after January first of the year following the year in which the taxes became due and payable, simple interest at the rate of twelve percent per annum upon the principal of the unpaid taxes must be charged until such taxes and penalties are paid, with such interest charges to be prorated to the nearest full month for a fractional year of delinquency. All the provisions of the law respecting delinquency of personal property assessments generally so far as may be consistent with the provisions of this chapter are applicable equally to the assessments and taxes provided for in this chapter.

SECTION 15. AMENDMENT. Section 57-32-04 of the North Dakota Century Code is amended and reenacted as follows:

57-32-04. Allocation of tax. The taxes imposed by this chapter upon express companies must be collected by the state tax commissioner and transferred to the state treasurer and deposited for deposit in the state general fund.

The taxes imposed by this chapter upon air transportation companies must be collected by the state tax commissioner and deposited with the state treasurer, who shall credit the same to the air transportation fund, but within ninety days after receipt thereof, these funds must be allocated and remitted as herein provided by the state treasurer to the cities or municipal airport authorities where such transportation companies make regularly scheduled landings. The taxes collected from each company must be allocated to each city or municipal airport authority where that company makes regularly scheduled landings by multiplying the total tax collected by a fraction, the numerator of which is the value of the company's property at a given city or municipal airport and the denominator of which is the total value of the property located in North Dakota that is subject to the assessment. It is the duty of the tax commissioner to certify to the state treasurer the names of such air transportation companies and the amount of tax of each company that must be allocated by the state treasurer to each city or municipal airport authority.

SECTION 16. AMENDMENT. Section 57-32-05 of the North Dakota Century Code is amended and reenacted as follows:

57-32-05. Collection of tax. If any tax required to be paid by any company under the provisions of this chapter has not been paid on or before October first of the year following the year of delinquency, the state ~~treasurer~~ tax commissioner shall seize personal property belonging to such company found within this state, sufficient to pay the amount of such tax with penalty and interest. The state ~~treasurer~~ tax commissioner, immediately after seizing said property, shall proceed to advertise the same for sale by publishing a notice at least two times in a newspaper published in Burleigh County. Such notice must describe the property seized, the amount of the tax and penalty for which the property has been seized, and the day and hour when and the place where said property will be sold. If the tax and penalty, with interest due thereon, have not been paid before the time appointed for sale, which may not be less than ten days after the first publication of such notice, the state ~~treasurer~~ tax commissioner shall proceed to sell such property, or so much thereof as may be necessary, to pay such tax, penalty, interest, and the costs of such seizure and sale, at public auction to the highest bidder.

SECTION 17. AMENDMENT. Section 57-32-06 of the North Dakota Century Code is amended and reenacted as follows:

57-32-06. Legal proceedings to enforce payment of tax. If the state ~~treasurer~~ tax commissioner is unable to find within this state sufficient personal property belonging to any company charged with the taxes prescribed by this chapter, to pay the same, with the penalty and interest thereon, the state ~~treasurer~~ tax commissioner shall notify the attorney general of the amount of such delinquent taxes, with penalty and interest accrued thereon, and it is the duty of ~~such officer~~ the attorney general to institute an action in the district court of Burleigh County to collect the same. Upon the institution of any such action, an attachment may be issued and any property owned by such company may be attached.

SECTION 18. EFFECTIVE DATE. Sections 1, 14, 15, 16, and 17 of this Act are effective for taxable years beginning after December 31, 2000. Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of this Act are effective for taxable events occurring after June 30, 2001.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 85

SENATE BILL NO. 2441

(Senators Krebsbach, Tollefson, Watne)
(Representatives Bellew, Carlson, Wald)

ALCOHOLIC BEVERAGE PREMISES DUTIES

AN ACT to amend and reenact sections 5-01-08 and 5-02-06 of the North Dakota Century Code, relating to the performance of official duties in licensed alcoholic beverage premises.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-08 of the 1999 Supplement to 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 person under twenty-one years of age manufacturing or attempting to manufacture alcoholic beverages, purchasing or attempting to purchase alcoholic beverages, consuming or having recently consumed alcoholic beverages other than during a religious service, being under the influence of alcoholic beverages, or being in possession of alcoholic beverages, or furnishing money to any person for such purchase, or entering any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with section 5-02-06, or if the person is a law enforcement officer or other public official entering the premises in the performance of official duty, is guilty of a class B misdemeanor. The court may, under this section, refer the person to an outpatient addiction facility licensed by the state department of 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 1999 Supplement to 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, 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 the person is a law enforcement officer or other public official entering the premises in the performance of official duty. 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 March 29, 2001

Filed March 29, 2001

CHAPTER 86

SENATE BILL NO. 2397

(Senators Kringstad, Lyson, Trenbeath)
(Representatives Cleary, Herbel, Klemin)

ALCOHOLIC BEVERAGE DIRECT SALES

AN ACT to amend and reenact sections 5-01-16 and 5-03-05 of the North Dakota Century Code, relating to direct sales of alcoholic beverages; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If Senate Bill No. 2053 does not become effective, section 5-01-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-01-16. Direct sale from out-of-state seller to consumer - Penalty.

1. No person in the business of selling alcoholic beverages may knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.
2. No person in the business of transporting goods may knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state treasurer shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.
4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.
5. This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state 2.38 gallons [9 liters] or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer per month for personal use and not for resale from a person ~~as described under subsection 4 or 2~~ holding a valid manufacturer's or retailer's license issued by the state of its domicile. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state. A manufacturer or retailer selling or shipping alcoholic beverages under this subsection shall obtain a direct shipping license from the state treasurer and pay an

annual fee of fifty dollars within thirty days of making the first shipment. A direct shipper shall pay the wholesaler and retailer taxes to the state treasurer on all alcoholic beverages sold to residents in this state at the rates set forth in sections 5-03-07 and 57-39.2-03.2. A direct shipper shall file reports with the state treasurer showing for each shipment, the quantity sold, the date shipped, and the amount of tax due the state. A direct shipper is subject to section 5-03-06. The state treasurer may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this subsection and may request award of all costs and attorneys' fees incurred by the state incidental to that action. Upon determination by the state treasurer that an illegal sale or shipment of alcoholic beverages has been made to a consumer in this state by either a manufacturer or retailer of alcoholic beverages, the state treasurer may notify both the bureau of alcohol, tobacco, and firearms of the United States department of the treasury and the licensing authority for the state in which the manufacturer or retailer is domiciled that a state law pertaining to the regulation of alcoholic beverages has been violated and may request those agencies to take appropriate action.

³⁹ **SECTION 2. AMENDMENT.** Section 5-01-16 of the North Dakota Century Code as amended and reenacted by Senate Bill No. 2053, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

5-01-16. Direct sale from out-of-state seller to consumer - Penalty.

1. No person in the business of selling alcoholic beverages may knowingly or intentionally ship, or cause to be shipped, any alcoholic beverage from an out-of-state location directly to a person in this state who is not a wholesaler.
2. No person in the business of transporting goods may knowingly or intentionally transport any alcoholic beverage, from an out-of-state location of a person in the business of selling alcoholic beverages, directly to a person in this state who is not a wholesaler.
3. For a first violation of subsection 1 or 2, the state tax commissioner shall notify, by certified mail, the violator and order that person to cease and desist any shipment of alcoholic beverages in violation of subsection 1 or 2. The second violation of subsection 1 or 2 is a class A misdemeanor and a third and subsequent violation is a class C felony.
4. The alcoholic beverage transported in violation of this section and the vehicle used in violation of this section are forfeitable property under chapter 29-31.1.
5. This section does not apply to a transaction in which an individual twenty-one years of age or older who imports or transports into this state 2.38 gallons [9 liters] or less of liquor or two hundred eighty-eight fluid ounces [8517.18 milliliters] or less of beer per month for personal use and not for resale from a person ~~as described under subsection 4 or 2~~

³⁹ Section 5-01-16 was also amended by section 4 of Senate Bill No. 2053, chapter 84.

holding a valid manufacturer's or retailer's license issued by the state of its domicile. Every package of alcoholic beverages shipped directly to an individual in this state must be labeled with conspicuous words "SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY". A shipper shall obtain the signature of an individual twenty-one years of age or older before delivering any alcoholic beverages shipped directly to an individual in this state. A manufacturer or retailer selling or shipping alcoholic beverages under this subsection shall obtain a direct shipping permit from the state tax commissioner and pay an annual fee of fifty dollars within thirty days of making the first shipment. A direct shipper shall pay the wholesaler and retailer taxes to the state tax commissioner on all alcoholic beverages sold to residents in this state at the rates set forth in sections 5-03-07 and 57-39.2-03.2. A direct shipper shall file reports with the state tax commissioner showing for each shipment, the quantity sold, the date shipped, and the amount of tax due the state. A direct shipper is subject to section 5-03-06. The state tax commissioner may initiate and maintain an action in a court of competent jurisdiction to enjoin a violation of this subsection and may request award of all costs and attorneys' fees incurred by the state incidental to that action. Upon determination by the state tax commissioner that an illegal sale or shipment of alcoholic beverages has been made to a consumer in this state by either a manufacturer or retailer of alcoholic beverages, the state tax commissioner may notify both the bureau of alcohol, tobacco, and firearms of the United States department of the treasury and the licensing authority for the state in which the manufacturer or retailer is domiciled that a state law pertaining to the regulation of alcoholic beverages has been violated and may request those agencies to take appropriate action.

SECTION 3. AMENDMENT. If Senate Bill No. 2053 does not become effective, section 5-03-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-03-05. Treasurer to enact regulations adopt rules - Appeal. The state treasurer, pursuant to chapter 28-32, shall adopt rules and regulations governing retailers, wholesalers, direct shippers, and manufacturers necessary to carry out the provisions of this title and to ensure efficient collection of beer and liquor taxes. All decisions of the state treasurer are subject to court review.

⁴⁰ **SECTION 4. AMENDMENT.** Section 5-03-05 of the North Dakota Century Code as amended and reenacted by Senate Bill No. 2053, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

⁴⁰ Section 5-03-05 was also amended by section 10 of Senate Bill No. 2053, chapter 84.

5-03-05. Tax commissioner to adopt rules - Appeal. The state tax commissioner, pursuant to chapter 28-32, shall adopt rules governing retailers, wholesalers, direct shippers, and manufacturers necessary to carry out the provisions of this title and to ensure efficient collection of beer and liquor taxes. All decisions of the state tax commissioner are subject to court review.

Approved April 23, 2001

Filed April 23, 2001

CHAPTER 87

HOUSE BILL NO. 1404 (Representatives Pietsch, Brusegaard) (Senator Lee)

FARM WINERY LICENSES

AN ACT to create and enact a new section to chapter 5-01 of the North Dakota Century Code, relating to farm winery licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴¹ **SECTION 1.** A new section to chapter 5-01 of the North Dakota Century Code is created and enacted as follows:

Farm winery license.

1. The state treasurer may issue a farm winery license to the owner or operator of a farm winery located within this state to produce table or sparkling wines. 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. Licenses may be issued and renewed for an annual fee of fifty dollars, which is in lieu of all other license fees required by this title.
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, 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.
3. The farm winery shall pay to the state the wholesaler taxes and the sales taxes on all wines sold by the farm winery as set forth in sections 5-03-07 and 57-39.2-03.2.
4. The farm winery shall report quarterly 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.

⁴¹ Section 5-01-17 was amended by section 2 of House Bill No. 1005, chapter 5.

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 produced by a farm winery.

Approved March 19, 2001
Filed March 19, 2001

BANKS AND BANKING

CHAPTER 88

SENATE BILL NO. 2164

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

STATE DEPARTMENT OF FINANCIAL INSTITUTIONS NAME CHANGE

AN ACT to amend and reenact sections 1-03-04 and 6-01-01, subsections 1 and 2 of section 6-01-01.1, subsections 5 and 8 of section 6-01-02, subsection 1 of section 6-01-04.1, subsection 1 of section 6-01-04.2, subsection 4 of section 6-01-10, section 6-01-13, subsection 1 of section 6-01-15, section 6-01-17.2, subsection 2 of section 6-02-01, sections 6-03-11, 6-03-13.5, 6-03-70, and 6-05-02, subsection 2 of section 6-05-04, subsections 1 and 3 of section 6-05-15.4, subsection 2 of section 6-05-15.5, section 6-05-28, subsection 1 of section 6-06-08, sections 6-06-08.2 and 6-06-08.3, subsection 2 of section 6-06-35, section 6-06-36, subsection 4 of section 6-08.1-01, section 6-08.2-02, subsection 3 of section 6-08.3-01, section 6-09-29, subsection 4 of section 6-09-35, section 6-10-06, sections 7-01-03, 7-01-09, and 7-01-11, subsection 2 of section 7-01-12, section 7-01-14, subsection 5 of section 7-02-01, subsections 1, 9, and 10 of section 7-02-08, sections 7-03-01, 7-03-03, 7-03-04, and 7-03-05, subsection 4 of section 7-03-07, sections 7-04-20, 7-05-01, 7-05-02, 7-05-03, 7-05-04, 7-05-05, 7-05-06, 7-05-07, 7-06-01, 7-06-02, 7-06-03, 7-06-04, 7-06-05, 7-06-07, 7-07-02, 7-07-03, 7-07-05, 7-07-06, 7-07-07, 7-07-08, 7-07-12, 7-08-01, 7-08-03, and 7-08-05, subsection 2 of section 10-04-05, subsection 2 of section 12.1-06.1-01, subsection 1 of section 13-03.1-01, subsection 1 of section 13-03.1-11, sections 13-04.1-01, 13-04.1-03, 13-04.1-05, 13-04.1-06, 13-04.1-08, 13-04.1-10, 13-04.1-11, 13-04.1-13, 13-05-01, 13-05-03, 13-05-05, and 13-05-06, subsection 1 of section 13-05-06.1, sections 13-05-08, 13-05-08.1, and 23-21.1-03, subsection 2 of section 51-17-02, subsection 1 of section 54-06-04, subsection 16 of section 54-11-01, and section 54-11-07 of the North Dakota Century Code, relating to the name of the department of banking and financial institutions; and to provide for legislative council correction of statutory references.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-03-04 of the North Dakota Century Code is amended and reenacted as follows:

1-03-04. Business days. All days other than those mentioned in sections 1-03-01, 1-03-02, and 1-03-02.1 are to be deemed business days for all purposes. However, any bank may remain closed on any one business day of each week, as it may from time to time elect. Any day upon which a bank is so closed shall be, with respect to such bank, a holiday and not a business day. Any act authorized, required, or permitted to be performed at or by or with respect to such bank on such

day, may be performed on the next succeeding business day, and no liability or loss of rights shall result from such delay.

Notice of intention on the part of any bank to remain closed on a business day of the week shall be posted in a conspicuous place in the lobby of the bank at least ten days prior to the establishment of such practice and similar notice shall be given when a bank elects to change the day of the week on which it remains closed. Any state bank establishing the practice, as hereinbefore provided, of closing one day a week shall give ten days' notice in writing to the commissioner of ~~banking and~~ financial institutions, in addition to posting the notice in the lobby. However, any bank may elect to remain closed on a business day of the week without any prior notice in the event of the following emergencies: any act of God, death of an officer, or a robbery.

SECTION 2. AMENDMENT. Section 6-01-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-01-01. Management and control - State department of ~~banking and~~ financial institutions. The state department of ~~banking and~~ financial institutions is under the supervision of the state banking board, state credit union board, and a chief officer designated as the commissioner of ~~banking and~~ financial institutions, and known as the state examiner. Whenever the term state examiner is used in this code, it means the commissioner of ~~banking and~~ financial institutions. The state department of ~~banking and~~ financial institutions has charge of the execution of all laws relating to state banks, trust companies, credit unions, building and loan associations, mutual investment corporations, mutual savings corporations, banking institutions, and other financial corporations, exclusive of the Bank of North Dakota.

SECTION 3. AMENDMENT. Subsections 1 and 2 of section 6-01-01.1 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. There is hereby created a special fund designated as the financial institutions regulatory fund. The amounts received under the following chapters, and any other moneys received by the department of ~~banking and~~ financial institutions, must be deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, 7-05, 13-03.1, 13-04.1, 13-05, and 51-17.
2. All moneys deposited in the financial institutions regulatory fund are reserved for use by the department of ~~banking and~~ financial institutions to defray the expenses of the department in the discharge of its administrative and regulatory powers and duties as prescribed by law, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state moneys. The department of ~~banking and~~ financial institutions is responsible for the proper expenditures of these moneys as provided by law.

SECTION 4. AMENDMENT. Subsections 5 and 8 of section 6-01-02 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. "Banking department" means the state department of ~~banking and~~ financial institutions.
8. "Commissioner" means the commissioner of ~~banking and~~ financial institutions.

SECTION 5. AMENDMENT. Subsection 1 of section 6-01-04.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The department of ~~banking and~~ financial institutions or the board may issue and serve upon any officer, director, or employee of a financial corporation or institution subject to its jurisdiction and upon the financial corporation or institution involved, a complaint stating the basis for the board's or the department's belief that the officer, director, or employee is engaging, or has engaged, in any of the following conduct:
 - a. Violating any law, regulation, board order, or written agreement with the board;
 - b. Engaging or participating in any unsafe or unsound practice; or
 - c. Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.

SECTION 6. AMENDMENT. Subsection 1 of section 6-01-04.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The department of ~~banking and~~ financial institutions or the board may issue and serve upon a financial corporation or institution subject to its jurisdiction a complaint stating the factual basis for the ~~department~~ department's or board's belief that the financial corporation or institution is engaging in any of the following conduct:
 - a. An unsafe or unsound practice.
 - b. A violation in the past or on a continuing basis of any law, regulation, board order or written agreement entered into with the board.

SECTION 7. AMENDMENT. Subsection 4 of section 6-01-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The biennial reports of the state banking board and the state credit union board shall be published in the form of a combined biennial report of the department of ~~banking and~~ financial institutions. The biennial report of the department shall be submitted to the governor and the secretary of state in accordance with section 54-06-04. The biennial report of the department must include all other biennial reports which the commissioner or the boards are required by law to submit to the governor and the office of management and budget.

SECTION 8. AMENDMENT. Section 6-01-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-01-13. Commissioner - Appointment of deputies. The commissioner may appoint, remove, and assign appropriate titles to such deputy examiners and such other employees as in ~~his~~ the commissioner's judgment may be necessary for the proper discharge of the business of the department of ~~banking and~~ financial institutions. The commissioner may select and designate one of said deputy examiners to be chief deputy examiner and to act during the absence or disability of

the commissioner, and in such cases the deputy examiner so designated has charge of the office and shall administer its affairs. ~~He~~ The chief deputy examiner shall perform such duties as may be prescribed by the commissioner.

SECTION 9. AMENDMENT. Subsection 1 of section 6-01-15 of the North Dakota Century Code is amended and reenacted as follows:

1. No officer or employee of this department may have any interest, directly or indirectly, in any corporation or institution within the jurisdiction of the department of ~~banking and~~ financial institutions, nor in any corporation or institution engaged wholly or in part in the writing or issuing of bonds of or for any such corporation or institution or any officer or employee thereof. Provided, however, this prohibition does not apply to membership in a state-chartered credit union or savings and loan association.

SECTION 10. AMENDMENT. Section 6-01-17.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-01-17.2. Additional assessment of banks and interstate branches.

Where the commissioner determines that more than one visit, inspection, or examination is necessary to promote the safety and soundness of a state banking association or a branch of an out-of-state state bank during a twelve-month period, the state banking association or branch shall pay to the state treasurer a fee for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with each additional visit, inspection, or examination and report of examination and for time used by each deputy examiner, or other person in making and otherwise preparing and typing the reports of examination herein provided for. Fees for the visit, inspection, or examination must be charged by the department of ~~banking and~~ financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visit, inspection, or examination provided for by this section. A state banking association or branch of an out-of-state state bank shall pay such assessment or fee within ten days of receiving a billing from the commissioner. Fees must be deposited in the financial institutions regulatory fund. The state treasurer shall report the payments of fees to the commissioner, and if any corporation or institution or branch is delinquent more than twenty days in making the payment, the board may make an order suspending the functions of the delinquent corporation or institution or branch until payment of the amount due. The commissioner may assess a penalty of five dollars a day additional for the delay. The state banking board may waive or postpone the collection of this special assessment if the assessment would place an undue burden on the state banking association or branch.

SECTION 11. AMENDMENT. Subsection 2 of section 6-02-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If any firm or corporation organized prior to July 1, 1931, has been granted a charter permitting it to use any word, words, or title contrary to the intent of this section, and by reason of its rights under such charter this section may not be enforced against it during the life of such charter, no renewal charter may be granted to such person, firm, or corporation permitting the continuance of the use of such word, words, or title contrary to or in violation of this section. Any person, firm, or corporation which, by reason of an existing charter right under any law

or statute in effect prior to July 1, 1931, may be held by the courts not to be affected by this section and which therefore refuses to comply with this section, during the period of noncompliance, shall prominently and continuously display in plain, legible, and clearly discernible lettering on all of its signs, stationery, circulars, and advertising, and in all of its printed or written matter, the following words and language: "NOT UNDER THE SUPERVISION OF THE STATE BANKING BOARD OR THE COMMISSIONER OF ~~BANKING AND~~ FINANCIAL INSTITUTIONS". Such language must be displayed as prominently thereon as is other matter therein.

SECTION 12. AMENDMENT. Section 6-03-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-11. Conversion, consolidation, or merger. Any two or more banking institutions as defined in section 6-01-02 upon making application to the state banking board may consolidate or merge if authorized by the board into one banking institution under the charter of either existing banking institution on such terms and conditions as lawfully may be agreed upon by a majority of the board of directors of each banking institution proposing to consolidate or merge subject to rules adopted by the state banking board. Before becoming final, such consolidation or merger must be ratified and confirmed by the vote of the shareholders of each such banking institution owning at least two-thirds of its capital stock outstanding, at a meeting to be held on the call of the directors. Notice of such meeting and of the purpose thereof must be given to each shareholder of record by registered or certified mail at least ten days prior to the meeting. The shareholders may unanimously waive such notice and may consent to such meeting and consolidation or merger in writing. The capital stock and surplus of such consolidated banking institution must not be less than that required under this title for the organization of a banking institution of the class of the largest consolidating banking institution. Immediately after the consolidation or merger a full report thereof including a statement of the assets and liabilities of the consolidated banking institution must be made to the commissioner by the surviving banking institution. Any banking institution may without approval by any state authority convert into or merge or consolidate with a national banking association as provided by federal law. A national bank proposing to merge into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of ~~banking and~~ financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

SECTION 13. AMENDMENT. Section 6-03-13.5 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-13.5. National bank, federal savings association, or state savings and loan association conversion to state bank. A national bank, federal savings association, or state savings and loan association located in this state which follows the procedure prescribed by federal law to convert into a state bank, must be granted a state charter if it meets the provisions of the North Dakota Century Code for the incorporation and chartering of a new state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, federal savings association, or state savings and loan association, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified by the board to the extent made necessary by the difference between an ordinary

incorporation and a conversion and no public hearing need be held on a conversion application. A national bank, federal savings association, or state savings and loan association proposing to convert into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for the examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions regulatory fund.

SECTION 14. AMENDMENT. Section 6-03-70 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-70. Reports - Regular and special - Publication - Penalty. Every state banking association shall respond to calls each year, the number to be determined by the commissioner. The commissioner shall prescribe the forms for such reports which must be the same forms as those for similar reports called by the federal deposit insurance corporation. The reports must exhibit in detail, under appropriate headings, the resources and liabilities of the association at the close of business on a past day specified by the commissioner, which must be the same day on which similar reports are required by the federal deposit insurance corporation. Each report must be verified by the oath of the president or the cashier and attested as correct by at least two of the directors and must be transmitted to the commissioner within thirty days after receipt of the request for the same. The commissioner may request an amended call for reports filed in error and may require republication of the call report containing material errors. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the federal deposit insurance corporation or federal reserve bank or a printout retrieved from computer facilities in the department of banking and financial institutions and connected to those of the federal deposit insurance corporation. The commissioner may call for a special report from any association whenever in the commissioner's judgment the same is necessary to obtain complete knowledge of the condition of the association. Every association which fails to make and transmit any report required by this section shall forfeit and pay to the state treasurer for deposit in the financial institutions regulatory fund a penalty of two hundred dollars for each delinquency. The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section.

SECTION 15. AMENDMENT. Section 6-05-02 of the North Dakota Century Code is amended and reenacted as follows:

6-05-02. Compliance with chapter required - Penalty for noncompliance. No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter nor subject to its provisions, except only national banking corporations, state banks authorized under this chapter, and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "trust", "trust company", or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a trust company until and unless such business is regularly organized and authorized under this chapter. If any firm or corporation organized prior to July 1, 1931, has been granted a charter permitting it to use any word, words, or title contrary to the intent of this section, and by reason of its rights under such charter, the provisions of this section may not be enforced against it during the life of such charter. However, no renewal charter may be granted to such person, firm, or corporation permitting the continuance of the use of such word, words, or title contrary to or in violation of this section. Any person, firm,

or corporation which, by reason of an existing charter right under any law or statute in effect prior to July 1, 1931, may be held by the courts not to be affected by this section and which therefore refuses to comply with the provisions of this section, during the period of noncompliance, shall display, prominently and continuously in plain, legible, and clearly discernible lettering on all of its signs, stationery, circulars, and advertising, and in all of its printed or written matter the following words and language: "NOT UNDER THE SUPERVISION OF THE STATE BANKING BOARD OR THE COMMISSIONER OF ~~BANKING AND~~ FINANCIAL INSTITUTIONS", and such language must be displayed thereon as prominently as any other matter therein. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section, shall forfeit to the state one hundred dollars for every day or part thereof during which such violation continues. In an action brought by the commissioner or any aggrieved person, the court may issue an injunction restraining such person, firm, company, copartnership, or corporation from further using such words, terms, or phrases in violation of this section or from further transacting business in such a way or manner as to lead the public to believe that its business is in whole or in part of the nature of a trust company, or that it is under the supervision of the state banking board or the commissioner.

SECTION 16. AMENDMENT. Subsection 2 of section 6-05-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Bonds of other states which have the approval of the commissioner of ~~banking and~~ financial institutions;

SECTION 17. AMENDMENT. Subsections 1 and 3 of section 6-05-15.4 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A trust company may establish and maintain for itself and its operating subsidiary organizations one or more offices or places of business within this state, throughout the United States, in foreign countries, or in dependencies or insular possessions of the United States upon written application to the department of ~~banking and~~ financial institutions for approval from the state banking board. The application must include the information specified by the board.
3. Within ten business days after receipt of the application by the department of ~~banking and~~ financial institutions, the commissioner shall determine if the application is complete and shall notify the trust company of the determination. If within the ten business days the commissioner determines the application is incomplete, the commissioner shall request the additional information necessary to complete the application. Within ten days after receipt of the additional information, the commissioner shall notify the trust company by mail of the commissioner's determination of completeness. Within sixty days after the date for the mailing of a notice of completeness by the commissioner, the state banking board either shall approve the application or shall notify the trust company that a hearing on the application will be required.

SECTION 18. AMENDMENT. Subsection 2 of section 6-05-15.5 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A trust company that desires to establish or acquire an operating subsidiary must submit a written notification to the department of ~~banking and~~ financial institutions not less than thirty days before the trust company's investment in the subsidiary organization is made. The notification must include the information specified by the state banking board.

SECTION 19. AMENDMENT. Section 6-05-28 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-05-28. Examination by commissioner - Fees - Power over business, officers, and employees. The commissioner shall make a full, true, complete, and accurate examination and investigation of the affairs of each corporation doing business under this chapter as often as the commissioner deems necessary. Such examination must be made without previous notice to the corporation to be examined. Fees for such examinations must be charged by the department of ~~banking and~~ financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund. The commissioner, in the commissioner's discretion, may accept, in lieu of any examination authorized or required by this title to be conducted by the department of ~~banking and~~ financial institutions, the examination that may have been made of such institution within a reasonable period by the federal reserve bank or federal deposit insurance corporation, if a copy of such examination is furnished to the commissioner. The commissioner shall assume and exercise over each such corporation and its business, officers, directors, and employees all the power and authority conferred upon the commissioner over ~~banking and other~~ financial or moneyed corporations or associations.

SECTION 20. AMENDMENT. Subsection 1 of section 6-06-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Credit unions and the permanent loan funds of credit unions, if any, are under the supervision of the commissioner. Credit unions shall report to the commissioner when called by the commissioner, and at least twice each year. The commissioner shall prescribe the forms for the reports. The reports must be received by the commissioner within thirty days of the call. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the national credit union administration, or a printout retrieved from computer facilities in the department of ~~banking and~~ financial institutions and connected to those of the national credit union administration. The commissioner may call for special reports from any credit union whenever in the commissioner's judgment it is necessary to obtain complete knowledge of the condition of the credit union. Every credit union that fails to make and transmit any report required in pursuance of this section shall forfeit and pay to the state a penalty of two hundred dollars for delinquency. The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section.

SECTION 21. AMENDMENT. Section 6-06-08.2 of the North Dakota Century Code is amended and reenacted as follows:

6-06-08.2. Failing institution - Emergency powers - Hearing - Order - Appeal. Whenever the state credit union board determines that a merger or acquisition of any of the credit unions under its supervision is necessary because the institution's equity is impaired, it is conducting its business in an unsafe, unsound, or unauthorized manner, or it is endangering the interests of shareholders, creditors or the public, whether or not the institution is insolvent, the state credit union board may, without a hearing, declare an emergency and declare that the institution is a failing institution. Upon such declaration the state credit union board may authorize the commissioner of ~~banking and~~ financial institutions to immediately take possession of the institution. The board is authorized to do all things necessary to continue service to the affected community including any merger or acquisition under this chapter or otherwise.

An institution which is the subject of such a board declaration may ask for a hearing before the state credit union board within five days after service of the state credit union board's declaration upon it. The application for a hearing must be granted and the hearing must be held not later than ten days after the application is filed. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board shall enter a final order. The institution may appeal the order to the district court of the county in which the credit union is located within ten days after the order is served upon it. The appeal is governed by chapter 28-32 except that the board has ten days after service of the notice of appeal to certify the record, and the district court shall hear the appeal as expeditiously as possible.

SECTION 22. AMENDMENT. Section 6-06-08.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-06-08.3. Examination of credit union computer servicers. The commissioner may conduct an examination or inspect the records and operation of any computer servicer providing data processing services for any credit union under the department of ~~banking and~~ financial institutions' jurisdiction.

SECTION 23. AMENDMENT. Subsection 2 of section 6-06-35 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. a. A federal credit union, organized under the laws of the United States may be converted into a state credit union by (1) complying with all federal requirements requisite to enabling it to convert to a state credit union or to cease being a federal credit union, (2) filing with the state credit union board proof of such compliance, satisfactory to the commissioner, (3) filing with the commissioner an organization certificate and bylaws, both in triplicate, as required by section 6-06-02, and (4) granting discretionary authority to the commissioner to conduct an examination prior to the conversion date. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of ~~banking and~~ financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.
- b. When the commissioner has been satisfied that all of such requirements, and all other requirements of the North Dakota law have been complied with, the commissioner shall notify the applicants and the state credit union board of that fact, and the

board shall instruct the secretary of state to issue a charter in accordance with section 6-06-02. Upon issuance of the charter, the federal credit union shall become a state credit union and ceases to be a federal credit union. The state credit union is vested with all of the assets and shall continue responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place.

SECTION 24. AMENDMENT. Section 6-06-36 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-06-36. Merger. Any credit union chartered under this chapter or under act of Congress may merge under rules and regulations established by the state credit union board. A federal credit union proposing to merge into a state-chartered credit union shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of ~~banking and~~ financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund. The secretary of state shall charge a fee of fifty dollars for all services in connection with a merger authorized by the state credit union board, including filing of a certificate of organization or bylaws, and issuing or canceling charters.

⁴² **SECTION 25. AMENDMENT.** Subsection 4 of section 6-08.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Financial institution regulatory agency" means any of the following:
 - a. The federal deposit insurance corporation.
 - b. The federal savings and loan insurance corporation.
 - c. The national credit union administration.
 - d. The federal reserve board.
 - e. The United States comptroller of the currency.
 - f. The department of ~~banking and~~ financial institutions.
 - g. The federal home loan bank board.

SECTION 26. AMENDMENT. Section 6-08.2-02 of the North Dakota Century Code is amended and reenacted as follows:

6-08.2-02. Presentment of plan of acquiring entity to the state department of ~~banking and~~ financial institutions. Prior to any acquisition under this chapter, the acquiring entity must present a plan to the state department of

⁴² Section 6-08.1-01 was also amended by section 1 of Senate Bill No. 2191, chapter 97.

~~banking and~~ financial institutions. The plan must provide that the acquiring entity commits itself to the condition that it capitalize each bank to be acquired in this state according to the applicable banking laws of this state and the requirements of the federal deposit insurance corporation or any applicable federal banking laws.

SECTION 27. AMENDMENT. Subsection 3 of section 6-08.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Commissioner" means the commissioner of ~~banking and~~ financial institutions.

SECTION 28. AMENDMENT. Section 6-09-29 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09-29. Examinations and audit reports. The state auditor shall contract with an independent certified public accounting firm for an annual audit of the Bank of North Dakota in accordance with generally accepted government auditing standards. The state auditor shall audit annually or contract for an annual audit of the separate programs and funds administered by the Bank of North Dakota. On request of the state auditor, the industrial commission shall assist the state auditor in the auditing firm selection process, but the selection of the auditing firm is the state auditor's responsibility. The auditor selected shall prepare an audit report that includes financial statements presented in accordance with the audit and accounting guide for banks and savings institutions issued by the American institute of certified public accountants. The auditor also shall prepare audited financial statements for inclusion in the comprehensive annual financial report for the state. The state auditor may conduct performance audits of the Bank of North Dakota, including the separate programs and funds administered by the Bank. The auditor shall report the results of the audit to the industrial commission and to the legislative assembly. The Bank of North Dakota or its separate programs and funds shall pay the costs of the audit. The department of ~~banking and~~ financial institutions, through the commissioner, shall examine the Bank of North Dakota at least once each twenty-four months and conduct any investigation of the Bank which may be necessary. The commissioner shall report the examination results, and the results of any necessary investigation, to the industrial commission as soon as practicable and to the legislative assembly. The department of ~~banking and~~ financial institutions shall charge a fee for any examination or investigation at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations and investigations provided for by this section.

⁴³ **SECTION 29. AMENDMENT.** Subsection 4 of section 6-09-35 of the North Dakota Century Code is amended and reenacted as follows:

4. Information obtained from the state department of ~~banking and~~ financial institutions which would not be available from that agency under section 6-01-07.1.

SECTION 30. AMENDMENT. Section 6-10-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁴³ Section 6-09-35 was also amended by section 1 of Senate Bill No. 2117, chapter 393.

6-10-06. Duty of commissioner. The commissioner may make an examination of the business of such licensee, and such applicant shall pay an examination fee. Fees for such examinations must be charged by the department of banking and financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 31. AMENDMENT. Section 7-01-03 of the North Dakota Century Code is amended and reenacted as follows:

7-01-03. Articles of incorporation - Contents. Whenever any number of persons, not less than nine, desires to incorporate a building and loan association, having for their object the conduct and operation of such an association as defined in this title, they shall prepare and file articles of incorporation to that effect in the manner specified in this title. Unless otherwise provided herein the general law governing profit corporations applies to such association. The articles of incorporation must include the following:

1. The name of the association. The name must not be the same as, nor too closely resemble, that in use by any existing corporation established under the laws of this state. The words, "building and loan association" or "savings and loan association" must form a part of the name, and only corporations and associations organized under this chapter are entitled to use a name embodying either of said combinations of words. Any association in existence on July 1, 1931, may continue and renew its charter in the name under which it was then operating. Any corporation or association organized or operating under this chapter is authorized to change its name to embody the words "savings and loan association".
2. The principal office, or place of business of the association, which must be within this state.
3. The territory in which such association proposes to operate.
4. The amount of its authorized capital shares and the number of shares into which the same must be divided. Such capital must be divided into shares having a par value of fifty dollars, one hundred dollars, or two hundred dollars.
5. A provision that such association is organized under this chapter for the purpose herein expressed.
6. The name, residence, and occupation of, and a statement of the number of the shares subscribed and the amount of cash paid upon such shares by, each of the persons who subscribed and acknowledged the said articles, a majority of whom must be citizens of this state and who thereafter must be called incorporators.
7. The term of corporate existence, which may not exceed twenty years but which may be extended as provided in this chapter.
8. The number of directors of the association.

Immediately upon the preparation of such articles of incorporation, and before the same are filed in the office of the secretary of state, four copies thereof must be filed in the office of the commissioner of ~~banking and~~ financial institutions for the use of the state banking board.

SECTION 32. AMENDMENT. Section 7-01-09 of the North Dakota Century Code is amended and reenacted as follows:

7-01-09. Issuance of certificate by state banking board - Filing of articles. If the state banking board is satisfied from its investigation that a certificate should issue, it, within sixty days after the articles of incorporation and bylaws have been presented to it, shall instruct the commissioner of ~~banking and~~ financial institutions to issue, under ~~his~~ the commissioner's hand and official seal, a certificate reciting in substance: that the articles of incorporation and bylaws have been filed in ~~his~~ the commissioner's office; that said articles and bylaws conform to all the requirements of this title; that the board has approved the same; that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this title; that there is a reasonable need for the existence of said building and loan association; and that the public convenience and advantage will be promoted thereby. Such certificate must be made in quadruplicate and attached to each copy of the articles of incorporation, one of which must be retained by the commissioner, and the other three must be returned to the incorporators who forthwith shall file one copy thereof in the office of the secretary of state, one in the office of the register of deeds of the county in which the principal place of business of said association is located, and the other must be retained by the association. Immediately upon the receipt of said certified copy, the secretary of state shall issue a certificate of incorporation, whereupon the incorporation of the association is deemed complete.

SECTION 33. AMENDMENT. Section 7-01-11 of the North Dakota Century Code is amended and reenacted as follows:

7-01-11. Consolidation authorized. Any building and loan association, with the consent and approval of the commissioner of ~~banking and~~ financial institutions, may consolidate with or be taken over by any other association upon such terms as may be authorized by the respective boards of directors of such associations after being authorized to enter into such consolidation by a majority vote of their respective shareholders at any regular or special meeting. This section must be construed to include any association taken over by the commissioner whether in process of liquidation or otherwise.

SECTION 34. AMENDMENT. Subsection 2 of section 7-01-12 of the North Dakota Century Code is amended and reenacted as follows:

2. A copy of the minutes of such meeting of the shareholders verified by the affidavit of the president or vice president and the secretary of the meeting must be filed within ten days after said meeting in the office of the commissioner of ~~banking and~~ financial institutions. Such verified copy of the minutes of such meeting when so filed is presumptive evidence of the holding and of the action of such meeting; and

SECTION 35. AMENDMENT. Section 7-01-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7-01-14. State savings and loan association conversion to state bank. A state savings and loan association located in this state which follows the procedure

prescribed by the board to convert into a state bank, must be granted a state charter if it meets the provisions of the North Dakota Century Code for the incorporation and chartering of a new state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting state savings and loan association, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified by the board to the extent made necessary by the difference between an ordinary incorporation and a conversion and no public hearing need be held on a conversion application. A state savings and loan association proposing to convert into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for the examination at an hourly rate sufficient to cover all reasonable expenses of the department of ~~banking and~~ financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions regulatory fund.

SECTION 36. AMENDMENT. Subsection 5 of section 7-02-01 of the North Dakota Century Code is amended and reenacted as follows:

5. To acquire, hold, encumber, and convey such real estate and personal property as may be necessary for the transaction of its business, or to enforce or protect its securities, but not over two percent of the assets of any association may be invested in its home office, lot, and building, and furniture and fixtures; provided, however, that ten percent of the assets of any association may be invested in its home office, lot, building, and furniture and fixtures, when authorized by a vote of two-thirds of its directors and the written approval of the commissioner of ~~banking and~~ financial institutions.

SECTION 37. AMENDMENT. Subsections 1, 9, and 10 of section 7-02-08 of the North Dakota Century Code are amended and reenacted as follows:

1. To borrow money when deemed necessary, and to issue its promissory notes therefor, and to pledge its assets as security for such notes, but the assets and securities of an association must not be pledged or hypothecated to secure its borrowed money in an amount exceeding twenty-five percent of its assets without the consent of the commissioner of ~~banking and~~ financial institutions.
9. To loan its idle funds to other domestic building and loan associations when authorized by a vote of two-thirds of its directors and the written approval of the commissioner of ~~banking and~~ financial institutions.
10. To invest its idle funds in bonds and other obligations of the United States; in bonds and other obligations of foreign countries when first approved by the commissioner of ~~banking and~~ financial institutions; in bonds or evidences of debt of this state or any political subdivision thereof; in bonds or evidences of debt of any other state in the Union; or in bonds or evidences of debt of any county, city, or school district having a population according to the last state or federal census of ten thousand or more inhabitants, in any such other state of the Union.

SECTION 38. AMENDMENT. Section 7-03-01 of the North Dakota Century Code is amended and reenacted as follows:

7-03-01. Directors and officers - Election - Qualification - Duties - Meetings. The conduct and management of the affairs and business of such association is vested in a board of directors which must consist of an uneven number of members, not less than five nor more than eleven. The incorporators of the association shall possess the qualifications of directors and shall serve as directors until the first meeting of the shareholders, and until their successors are elected and qualified. The directors thereafter must be elected by the shareholders of the association in accordance with the provisions of this title and the bylaws of the association. No person is eligible to election as a director or an officer unless ~~he~~ that person is the owner in good faith and in ~~his~~ that person's own right on the books of the association of shares upon which at least two hundred dollars have been paid. The directors shall hold their office for not less than one year nor more than three years, and if the term of office is for a longer period than one year, the bylaws must provide that the terms of an equal number thereof, as nearly as possible, expire each year. Each director, when appointed or elected, shall take an oath that ~~he~~ the director, so far as the duty devolves upon ~~him~~ the director, diligently and honestly will administer the affairs of such association, that ~~he~~ the director will not knowingly or willingly violate or permit to be violated, any of the provisions of this title; that ~~he~~ the director is a bona fide owner of the number of shares required by this section to become a director, standing in ~~his~~ the director's own name on the books of the association, and that said shares are not hypothecated nor in any way pledged as security for any debt. Such oath, subscribed by the director making it and certified by the officer before whom it was taken, must be filed in the office of the commissioner of ~~banking and~~ financial institutions as a part of the qualification of such director. Meetings of the board of directors must be held at least once each month. Any person elected to be a director who, after such election, hypothecates, pledges, or ceases to be the owner in ~~his~~ that person's own right of the necessary qualifying shares thereupon shall vacate ~~his~~ that person's office. The board of directors, when authorized to do so by the bylaws, may elect the officers or any of them and fill vacancies until the next annual meeting of the shareholders.

SECTION 39. AMENDMENT. Section 7-03-03 of the North Dakota Century Code is amended and reenacted as follows:

7-03-03. Removal of directors, officers, or employees by commissioner. Any director, officer, or employee of any association found by the commissioner of ~~banking and~~ financial institutions to be incompetent or dishonest may be removed by ~~him~~ the commissioner from such office or position upon the failure of the board of directors to act.

SECTION 40. AMENDMENT. Section 7-03-04 of the North Dakota Century Code is amended and reenacted as follows:

7-03-04. Agents and solicitors - Licenses and revocation thereof. No person receiving compensation from a building and loan association may act as solicitor or agent for the sale of the shares of stock, shares of membership, certificates, or other securities or forms of investment issued by such association, except shares issued in connection with and not exceeding the amount of any loan as made, until ~~he~~ that person first has procured a license therefor from the commissioner of ~~banking and~~ financial institutions. No license, however, may be required by any officer or director of such association. To obtain such license there must be filed with the commissioner a duplicate of the authorization or appointment issued to such person, together with a request from a licensed association that a license be issued to ~~him~~ that person to act as an agent or solicitor for it, accompanied by a fee of two dollars. All such licenses expire by limitation on the thirty-first day of December succeeding their issue, and may be renewed from time to

time for an additional period of one year upon a request therefor from the association originally applying and upon payment of a renewal fee of two dollars. Any such license may be revoked at any time, on the application of the association for whom it was issued, or may be revoked by the commissioner for cause. The commissioner shall keep an alphabetical list of the names of persons to whom such licenses are issued with the date of issue and renewal, and the name of the association for whom such licensee is authorized to act. All such licenses must be issued under rules and regulations to be prescribed by the state banking board.

SECTION 41. AMENDMENT. Section 7-03-05 of the North Dakota Century Code is amended and reenacted as follows:

7-03-05. Bonds of directors, officers, agents, and employees. Every officer, director, employee, or agent handling or having the custody or charge of funds, securities, books, or records belonging to a building and loan association, before entering upon the discharge of ~~his~~ that person's duties, shall give a good and sufficient bond in such sum and upon such conditions as may be required by the board of directors in keeping with rules and regulations relative thereto established by the commissioner of ~~banking and~~ financial institutions. All such bonds must be approved by the board of directors of such association and are subject to the approval of the commissioner. In lieu of individual bonds, a blanket bond covering all active officers and employees of such association may be executed, subject to the provisions as to approval of surety, amount, and form specified herein. The board of directors, at its discretion, may require any other bond or bonds in addition to the bond herein required. Officers of an association who do not handle the association's funds or securities are not required to give bond. Bonds must be executed in duplicate-original, one of which must be filed with the commissioner and the other must be retained by an officer or custodian of the association. All directors and officers of such association, on being reelected to office, and all agents and employees, upon their reappointment, shall renew their bonds.

SECTION 42. AMENDMENT. Subsection 4 of section 7-03-07 of the North Dakota Century Code is amended and reenacted as follows:

4. Having the custody or control of its books, willfully refuses or fails to make any proper entry in the books of such association as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by the commissioner of ~~banking and~~ financial institutions, ~~his~~ the commissioner's chief deputy, or any of ~~his~~ the commissioner's examiners,

SECTION 43. AMENDMENT. Section 7-04-20 of the North Dakota Century Code is amended and reenacted as follows:

7-04-20. Reduction of liability to shareholders. Whenever the losses of any association resulting from depreciation in value of its securities or otherwise exceed its reserve, undivided profits, and current earnings so that the estimated value of its assets is less than the total amount due its members, the commissioner of ~~banking and~~ financial institutions, upon petition of such building and loan association, may order a reduction of its liability to shareholders in such manner as to distribute the loss equitably among such shareholders. If thereafter such association realizes from such assets a greater amount than was fixed in the order of reduction, such excess must be divided among shareholders whose credits were so reduced, but to the extent of such reduction only.

SECTION 44. AMENDMENT. Section 7-05-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7-05-01. Examination and fees therefor. The commissioner of ~~banking and~~ financial institutions, at least once each year or oftener if the commissioner deems it necessary or expedient, shall examine into the affairs of all domestic associations doing business in this state. Whenever persons holding ten percent or more of the subscribed shares of any association file a written application with the commissioner requesting the commissioner to make an examination of any such association, the commissioner shall make such examination forthwith. Upon the completion of any examination of any association made by the commissioner or under the direction of the commissioner, the association so examined shall pay to the state treasurer a fee. Fees for such examination must be charged by the department of ~~banking and~~ financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. The commissioner shall report such payment to the state banking board, and if any such association is delinquent more than twenty days in making such payment, the state banking board may make an order suspending the functions of such association until payment of the amount due. The commissioner may assess a penalty of five dollars additional for each day of delay in payment. In lieu of the examinations herein required, the commissioner may accept any examination made by a federal home loan bank, the federal home loan bank board, or by the federal savings and loan insurance corporation. The commissioner may in ~~his or her~~ the commissioner's discretion conduct a joint examination with said described federal agencies. Fees and penalties under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 45. AMENDMENT. Section 7-05-02 of the North Dakota Century Code is amended and reenacted as follows:

7-05-02. Powers of commissioner. The commissioner of ~~banking and~~ financial institutions has power to prescribe for and supervise a uniform system of reports for all associations and has access to and may compel the production of all books, papers, securities, and moneys of any association under examination. ~~He~~ The commissioner has power to administer oaths to and examine the officers, employees, agents, and shareholders of such association relative to its business and affairs.

SECTION 46. AMENDMENT. Section 7-05-03 of the North Dakota Century Code is amended and reenacted as follows:

7-05-03. Building and loan associations. The commissioner of ~~banking and~~ financial institutions shall keep and preserve in permanent form a full record of the proceedings of the commissioner, including a concise statement of each association examined, and the commissioner shall report to the state banking board as provided by section 6-01-10.

SECTION 47. AMENDMENT. Section 7-05-04 of the North Dakota Century Code is amended and reenacted as follows:

7-05-04. Reports confidential - Exceptions - Penalty. Information obtained in the course of an examination by the commissioner of ~~banking and~~ financial institutions is confidential information. However, the above provision does not apply when the public duty of such officer requires ~~him~~ the commissioner to report upon or take official action regarding the condition of an association that ~~he~~

the commissioner has examined. This section must not be construed to prevent the said officer from fully disclosing to any federal agency any information which such commissioner may have in ~~his~~ the commissioner's office pertaining to such associations. Nothing in this section prevents the proper exchange of information relating to building and loan associations and the business thereof with the representatives of building and loan departments of other states, but in no case may the private business or affairs of any individual association or company be disclosed. This section must not be construed to prevent the said officer from fully disclosing to the federal home loan bank board at Washington, D.C., or to the federal home loan bank of this district, or to any other federal agency, any information which such commissioner may have in ~~his~~ the commissioner's office pertaining to such associations. It is a class C felony for the commissioner, ~~his~~ the commissioner's deputy, or any of ~~his~~ the commissioner's employees to willfully make a false report as to the condition of any association.

SECTION 48. AMENDMENT. Section 7-05-05 of the North Dakota Century Code is amended and reenacted as follows:

7-05-05. Annual statement - Filing - Publication. Every association authorized to do business in this state, annually on the thirty-first day of December or within thirty days thereafter, shall file with the commissioner of ~~banking and~~ financial institutions a full and detailed report, in writing, of the affairs and business of the association for the fiscal year ending on December thirty-first, showing its financial condition at the end of said year. The report must be in such form and must contain such information as may be prescribed by the commissioner. It must be sworn to by the secretary of the association, and its correctness must be attested by at least three directors or by an auditing committee appointed by the board of directors. Such report, in such form as the commissioner may require, must be published once in a newspaper published in the city in which the association is located, or if no newspaper is published therein, in the one published nearest thereto in the same county. Proof of such publication must be furnished at such times and in such manner as may be required by the commissioner.

SECTION 49. AMENDMENT. Section 7-05-06 of the North Dakota Century Code is amended and reenacted as follows:

7-05-06. Report to commissioner. Every association shall make a report of its condition to the commissioner of ~~banking and~~ financial institutions whenever requested by ~~him~~ the commissioner to do so, and such report may be in addition to the report required under section 7-05-05. Such report must be in the form prescribed by the commissioner and must be verified by the oath or affirmation of the president, vice president, or secretary of the association and attested by at least two of the directors who shall sign such report. The report must exhibit in detail, under appropriate headings, the resources and liabilities of the association at the close of business on any past day specified by the commissioner, and must be transmitted to the commissioner within fifteen days after the receipt of a request therefor from ~~him~~ the commissioner.

SECTION 50. AMENDMENT. Section 7-05-07 of the North Dakota Century Code is amended and reenacted as follows:

7-05-07. Communications from commissioner. Each official communication directed by the commissioner of ~~banking and~~ financial institutions or one of ~~his~~ the commissioner's examiners or deputies to a building and loan association, or an officer thereof, relating to an investigation or examination conducted by the commissioner or containing suggestions or recommendations as to

the conduct of the business of the association must be submitted by the officer receiving it to the board of directors at the next meeting of the board and noted in the minutes of the meeting of such board.

SECTION 51. AMENDMENT. Section 7-06-01 of the North Dakota Century Code is amended and reenacted as follows:

7-06-01. Voluntary liquidation and settlement. Any domestic association doing business in this state may go into liquidation, with the consent of the commissioner of ~~banking and~~ financial institutions, if the shareholders deem it advisable. Such liquidation must be initiated by a resolution declaring that such association intends to go into liquidation and to discontinue business as a building and loan association, and such resolution requires a two-thirds affirmative vote of the shareholders at any regular meeting, or at a special meeting called for the purpose of liquidation. A copy of the resolution, certified by the president and secretary of the association and under the seal thereof, must be transmitted to the commissioner within ten days after the adoption thereof. Thereupon, the commissioner may issue ~~his~~ the commissioner's certificate reciting that such association is in liquidation. After the issuance of such certificate, it is unlawful for the association to issue shares or to loan or advance its money to shareholders or to any person or persons. All of the income and receipts of the association, in excess of the actual expense of managing the same, must be applied thereafter to pay off the indebtedness of the association. Any moneys not required for payment of indebtedness must be paid pro rata on the shares in the association upon which no loans have been made. The board of directors of an association in liquidation may adopt such rules and make such orders as are just and equitable for the sale and disposition of all property held by the association and for the division of its assets. An association in liquidation is subject to examination by and is under the supervision of the commissioner.

SECTION 52. AMENDMENT. Section 7-06-02 of the North Dakota Century Code is amended and reenacted as follows:

7-06-02. Duties of commissioner when association operates unlawfully or is insolvent. Whenever the commissioner of ~~banking and~~ financial institutions, from any examination made by ~~him~~ the commissioner or from any report made to ~~him~~ the commissioner or to the shareholders, finds that any association operating under this title is violating the provisions of its charter or of this title, or is conducting its business in an unsafe or unauthorized manner, ~~he~~ the commissioner, by an order addressed to the association so offending, shall direct a discontinuance of such violations or unsafe practices and a conformity to all requirements of the law. If such association refuses or neglects to comply with such order within the time specified therein, or if it appears to the commissioner that the association is in an unsafe condition, or is conducting its business in an unsafe manner such as to render its further proceeding hazardous to the public or to those having funds in its custody, or if ~~he~~ the commissioner finds that its assets are impaired to such an extent that after providing for all liabilities other than to shareholders, they do not exceed in volume the dues or principal payments paid in by shareholders and accredited to or on account of all classes of shares issued and outstanding, ~~he~~ the commissioner, in order to prevent waste and diversion of assets, shall assume and take charge of the affairs and business of such association, and possession of all its books, records, and assets of every description, and ~~he~~ the commissioner shall hold and retain the possession thereof pending the further proceedings as specified in this chapter.

SECTION 53. AMENDMENT. Section 7-06-03 of the North Dakota Century Code is amended and reenacted as follows:

7-06-03. Refusal of association to deliver assets to commissioner.

Should the board of directors, secretary, or person in charge of any association refuse to permit the commissioner of ~~banking and~~ financial institutions to take possession of the association and its books, assets, and records as provided in section 7-06-02, the commissioner shall communicate such fact to the attorney general. It then is the duty of the attorney general immediately to institute such proceedings as may be necessary to place the commissioner in immediate possession of the property of such association.

SECTION 54. AMENDMENT. Section 7-06-04 of the North Dakota Century Code is amended and reenacted as follows:

7-06-04. Commissioner's duties upon taking over association.

Immediately upon securing possession of the effects of an association as provided in this chapter, the commissioner of ~~banking and~~ financial institutions shall prepare a full and true statement of the affairs and condition of such association, and shall include in such statement an itemized list of its assets and liabilities. ~~He~~ The commissioner shall proceed to receive and collect all debts, dues, and claims belonging to the association, and shall pay the immediate and reasonable expenses of ~~his~~ the commissioner's trust. When the condition of the association has been ascertained fully, if it appears that its affairs are in fact in an unsound condition, the commissioner at once shall notify the board of directors of the association of ~~his~~ the commissioner's decision, in writing, and shall give the directors twenty days in which to restore the affairs of the association to a sound condition. During such period, the commissioner shall remain in charge of the books, records, and assets of every description of the association, and shall attend personally, or be represented, at all meetings of the directors or shareholders. ~~He~~ The commissioner shall suggest such steps as ~~he~~ the commissioner may deem necessary to restore such association to a sound condition, and if it is not restored to a sound condition within the twenty-day period herein limited, ~~he~~ the commissioner shall report the facts to the attorney general. Thereupon it is the duty of the attorney general immediately to institute proceedings in the district court of the county in which such association has its principal place of business for the appointment of the commissioner as receiver.

SECTION 55. AMENDMENT. Section 7-06-05 of the North Dakota Century Code is amended and reenacted as follows:

7-06-05. Duty and authority of receiver. The commissioner of ~~banking and~~ financial institutions as such receiver, after having furnished a good and sufficient surety bond in an amount to be set by the court, shall proceed to liquidate the association's affairs. ~~He~~ The commissioner is authorized to collect all moneys due such association and to do and perform all acts necessary to conserve its assets and business. ~~He~~ The commissioner has general power and authority, except as otherwise limited by this chapter, to do any and all acts and to take any and all steps which ~~he~~ the commissioner deems necessary or desirable for the protection of the property and assets of such association, the speedy and economical liquidation of its assets and affairs, and the payment of its creditors, or for the reopening and resumption of business by the association where that is practicable or desirable. ~~He~~ The commissioner may institute, either in ~~his~~ the commissioner's name as receiver or in the name of the association, such legal proceedings as ~~he~~ the commissioner deems expedient for the purposes set forth in this title.

SECTION 56. AMENDMENT. Section 7-06-07 of the North Dakota Century Code is amended and reenacted as follows:

7-06-07. Receivership where association insured under federal act. If the association is an insured association within the provisions of the National Housing Act as now or hereafter amended, a signed and sealed copy of each order and certificate of the commissioner of ~~banking and~~ financial institutions mentioned in sections 7-06-02, 7-06-03, and 7-06-04 must be sent promptly by the commissioner by registered or certified mail to the federal savings and loan insurance corporation, Washington, D.C., and if the association has such insurance protection, the federal savings and loan insurance corporation is empowered, at its option, to act as receiver or coreceiver in the liquidation of the affairs of the association, and, if it desires, must be appointed as such receiver or as coreceiver with the commissioner. If it serves as receiver or coreceiver, it has all the rights, privileges, and powers granted to the commissioner as receiver, and also has all the rights, privileges, and powers conferred upon it by federal statutes now or hereafter enacted. It may advance money and make loans on the security of assets in liquidation or may purchase such assets or any part thereof at public or private sale, and it may bid for and purchase at any receiver's sale, and otherwise may liquidate or sell any part of the assets of the association of which it is receiver or coreceiver. In the event of purchase of any of such assets by said federal savings and loan insurance corporation, it shall bid and pay a fair and reasonable price therefor.

SECTION 57. AMENDMENT. Section 7-07-02 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

proceeding brought against it may be made upon the secretary of state of North Dakota; and that service of process, when so made upon the secretary of state, is valid service on the corporation.

SECTION 58. AMENDMENT. Section 7-07-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7-07-03. Securities to be deposited - Surety bond. A foreign corporation before doing business in this state shall deposit with the Bank of North Dakota, any federal reserve bank, or any other custodian approved by the commissioner one hundred thousand dollars in cash or bonds of the United States, bonds of any state of the United States, bonds of any county or municipal corporation in the state of North Dakota, or mortgages which are first liens on improved and productive real estate located within this state worth at least twice the amount of the liens. Such securities must be approved in advance by the commissioner of ~~banking and~~ financial institutions. The commissioner has authority to require such foreign corporation to deposit additional securities and to order a change in any of the securities so deposited, at any time. Such deposit must be held as security for all claims of residents of this state against such foreign corporation, and is liable for all judgments or decrees against such corporation. Said securities may not be released until all its obligations to residents of this state have been fully performed and discharged. Such foreign corporation may collect and use the interest on any securities so deposited as long as it fulfills its obligations and complies with the provisions of this title. It also may exchange them for other securities of equal value, if such exchange is approved by the commissioner. Any foreign corporation, in lieu of the deposit of securities as herein provided, may deposit with the commissioner a surety company bond, satisfactory to ~~him~~ the commissioner, in the sum of one hundred thousand dollars, which must be conditioned for the payment of any judgment entered against such foreign corporation by any court of competent jurisdiction in this state, in favor of any resident of this state. Such judgment creditor has the right to bring suit on such bond in ~~his~~ the creditor's own name in the county in which such judgment is rendered, and any resident of this state having a claim against such foreign corporation may bring suit in ~~his~~ that person's own name against the surety company by joining such surety company and such foreign building and loan corporation as parties defendant.

SECTION 59. AMENDMENT. Section 7-07-05 of the North Dakota Century Code is amended and reenacted as follows:

7-07-05. Certificate to do business. Whenever a foreign corporation has complied with the provisions of this chapter, it shall furnish to the commissioner of ~~banking and~~ financial institutions a full and complete statement of its financial affairs duly sworn to by its president and secretary, or by its officers holding like position. The commissioner immediately shall make an examination, either in person or by ~~his~~ the commissioner's duly authorized representative, of the corporation's assets and records to determine whether or not its financial status meets the requirements of this title. The foreign corporation shall pay the same fees for such examination as are provided in section 7-05-01. The commissioner, if ~~he~~ the commissioner is satisfied that such foreign corporation is in sound financial condition, that it is conducting its business in accordance with the laws of this state, and that it is safe, reliable, and entitled to public confidence, shall issue a certificate of authority to do business in this state to such foreign corporation upon the payment by it of the fees provided for in this chapter. Such certificate must be for one year and must be renewed each year. The commissioner, in ~~his~~ the commissioner's discretion, may accept a report of an examination of the affairs of such foreign corporation made under lawful

authority by a supervising officer of the jurisdiction in which the association or corporation is organized or chartered.

SECTION 60. AMENDMENT. Section 7-07-06 of the North Dakota Century Code is amended and reenacted as follows:

7-07-06. Fees to be paid. All foreign building and loan corporations shall pay to the commissioner of ~~banking and~~ financial institutions the following fees, which must be paid to the state treasurer by ~~him~~ the commissioner as hereinbefore provided: for filing each application for admission to do business in this state, five hundred dollars; for each certificate of authority and annual renewal of the same, two hundred dollars.

SECTION 61. AMENDMENT. Section 7-07-07 of the North Dakota Century Code is amended and reenacted as follows:

7-07-07. Certificate may be revoked. Should the commissioner of ~~banking and~~ financial institutions find upon examination that a foreign corporation or association to which a certificate has been granted does not conduct its business in accordance with law, or that the affairs of such foreign corporation are in an unsound condition, or if such foreign corporation refuses to permit examination to be made, ~~he~~ the commissioner may revoke its certificate of authority. Upon such revocation, ~~he~~ the commissioner shall mail a notice thereof to the home office of such foreign corporation, and shall cause a similar notice to be published once in a newspaper published in the city of Bismarck, North Dakota. After publication of said notice, it is unlawful for any agent of such foreign corporation to transact any business in this state except to receive payments to apply on loan contracts then in effect.

SECTION 62. AMENDMENT. Section 7-07-08 of the North Dakota Century Code is amended and reenacted as follows:

7-07-08. Examinations. Every foreign building and loan corporation doing business in this state is subject to the same examinations as a domestic association. The expense of all such examinations must be paid by the corporation or association examined upon bills approved by the commissioner of ~~banking and~~ financial institutions, and such expense shall include only necessary traveling expenses of the examiners and a sum of not to exceed twenty-five dollars per day for each examiner for each day actually required to make the examination. Such corporations need not be examined more often than once each year, and the commissioner may accept the result of any similar examination made and certified by the constituted authority of any foreign jurisdiction having laws of supervision similar to those of this state.

SECTION 63. AMENDMENT. Section 7-07-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7-07-12. Unsatisfied judgments - Sale of securities. If any resident of this state recovers judgment against a foreign corporation and such judgment is not satisfied within thirty days after the entry thereof, the judgment creditor or ~~his~~ the creditor's attorney may prepare and file with the commissioner of ~~banking and~~ financial institutions an affidavit setting forth the fact of the recovery of the judgment, that the same has remained unpaid for thirty days, and that no proceedings are pending for the vacation of such judgment or for an appeal therefrom, together with the petition of such creditor for the sale of the securities of the judgment debtor on deposit with the Bank of North Dakota, any federal reserve bank, or any other custodian approved by the commissioner sufficient to satisfy said judgment. The judgment creditor or ~~his~~ the creditor's attorney shall serve a copy of such affidavit

and petition on the foreign corporation by registered or certified mail addressed to its principal office or place of business, and proof of such mailing must be filed with the commissioner. Unless such foreign corporation furnishes to the commissioner satisfactory proof of the payment of the judgment within ten days after the filing of the affidavit and petition herein mentioned, the commissioner, or a designated agent, shall issue an order for the sale of the securities of such corporation, at current market prices, to pay the judgment in full, together with five percent thereon to cover ~~his~~ the commissioner's services and expenses. After a sale of securities as herein provided, such foreign corporation shall transact no new business in this state until the deficiency of securities caused by such sale has been made good by further deposit.

SECTION 64. AMENDMENT. Section 7-08-01 of the North Dakota Century Code is amended and reenacted as follows:

7-08-01. Operation without authority prohibited - Penalty. No association or corporation, whether foreign or domestic, may do business or attempt to do business as defined in this title without first complying with its provisions and without having received a certificate of authority to do business from the commissioner of ~~banking and~~ financial institutions as provided in this title. Any association or corporation violating any of the provisions of this title is guilty of a class C felony.

SECTION 65. AMENDMENT. Section 7-08-03 of the North Dakota Century Code is amended and reenacted as follows:

7-08-03. Evidence of corporate existence or capacity. The certificate issued by the secretary of state in accordance with this title, or a certificate issued by the commissioner of ~~banking and~~ financial institutions setting forth that any domestic association or foreign corporation has fully complied with the provisions of this title and is lawfully authorized to transact business in this state, must be admitted in evidence in all courts in this state, and is prima facie evidence of the corporate character and capacity of such association or corporation and of its right to transact business in this state except in actions prosecuted by the state in the nature of quo warranto.

SECTION 66. AMENDMENT. Section 7-08-05 of the North Dakota Century Code is amended and reenacted as follows:

7-08-05. Penalties - How recovered. All penalties provided for in this title, to which any association or corporation, either domestic or foreign, or any individual, may become subject, shall be recovered on complaint of the commissioner of ~~banking and~~ financial institutions in any court of competent jurisdiction, and all penalties so recovered must be paid into the state treasury.

SECTION 67. AMENDMENT. Subsection 2 of section 10-04-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Securities issued by and representing an interest in or a debt of, or guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of Congress and supervised by the United States, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company,

savings bank, savings institution, or credit union organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of ~~banking and~~ financial institutions of North Dakota.

SECTION 68. AMENDMENT. Subsection 2 of section 12.1-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. For the purposes of sections 12.1-06.1-02 through 12.1-06.1-07, unless the context otherwise requires:
 - a. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.
 - b. "Enterprise" means any corporation, limited liability company, association, labor union, or other legal entity or any group of persons associated in fact although not a legal entity.
 - c. "Financial institution" means any bank, trust company, savings and loan association, credit union, or money lender under the jurisdiction of the state department of ~~banking and~~ financial institutions or its commissioner, or the state banking board, or the state credit union board.
 - d. "Illegal transportation or disposal of radioactive waste material or hazardous waste" means the transportation or disposal into a nonhazardous waste landfill or the intentional and unlawful dumping into or on any land or water of radioactive waste material in violation of section 23-20.2-09 or rules adopted pursuant to that section which were in effect on January 1, 1997, or hazardous waste in willful violation of chapter 23-20.3 or the rules adopted pursuant to that chapter which were in effect on January 1, 1997, except for the handling of conditionally exempt small quantities of hazardous waste as referenced in section 33-24-02-05 of the North Dakota Administrative Code.
 - e. "Pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after July 8, 1987, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.
 - f. "Racketeering" means any act including any criminal attempt, facilitation, solicitation, or conspiracy, committed for financial gain, which is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:
 - (1) Homicide.
 - (2) Robbery.
 - (3) Kidnapping.

- (4) Forgery.
- (5) Theft.
- (6) Bribery.
- (7) Gambling.
- (8) Usury.
- (9) Extortion.
- (10) Unlawful delivery of controlled substances.
- (11) Trafficking in explosives, weapons, or stolen property.
- (12) Leading a criminal association.
- (13) Obstructing or hindering criminal investigations or prosecutions.
- (14) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.
- (15) Fraud.
- (16) Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.
- (17) Obscenity.
- (18) Child pornography.
- (19) Prostitution.

- g. "Records" means any book, paper, writing, record, computer program, or other material.

SECTION 69. AMENDMENT. Subsection 1 of section 13-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Administrator" means the commissioner of ~~banking and~~ financial institutions.

SECTION 70. AMENDMENT. Subsection 1 of section 13-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

1. At least once each thirty months the administrator or a duly authorized representative shall make an examination of the loans, business, and records of every licensee. In addition, for the purpose of discovering violations of this chapter or securing information lawfully required, the administrator may at any time investigate the loans, business, and records of any lender. For these purposes the administrator shall have free and reasonable access to the offices, places of business, and records of the lender. Fees for such examinations must be charged by

the department of ~~banking and~~ financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 71. AMENDMENT. Section 13-04.1-01 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-01. Administration. The department of ~~banking and~~ financial institutions shall use its facilities to administer and enforce this chapter. Any person or persons delegated to administer this chapter may not have financial interests directly or indirectly in any business which is subject to this chapter. The department has the power to promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has additional powers as set forth in this chapter.

SECTION 72. AMENDMENT. Section 13-04.1-03 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-03. Application for money broker license. Every application for a money broker license, or for a renewal thereof, must be made upon forms designed and furnished by the department of ~~banking and~~ financial institutions and must contain any information which the department shall deem necessary and proper. The department may further require any application to provide additional information which is not requested on the application form.

SECTION 73. AMENDMENT. Section 13-04.1-05 of the 1999 Supplement to 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 the preceding thirtieth of June and must be accompanied by the required annual fees. The form and content of renewal applications must be determined by the department of ~~banking and~~ 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 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 74. 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 banking and financial institutions. Insofar as consistent with the provisions of law, the department of banking and financial institutions has the power to:

1. Determine the qualifications of all applicants based on financial responsibility, character and fitness, and issue license if approved.
2. Establish codes of ethical conduct for licensees.

SECTION 75. AMENDMENT. Section 13-04.1-08 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-08. Revocation of license - Suspension of license - Surrender of license.

1. The department of banking and financial institutions may, if it has reason to believe that grounds for revocation of a license exist, send by registered or certified mail to the licensee, a notice of hearing stating the contemplated action and in general the grounds thereof and setting the time and place for a hearing thereon. Such hearing must be held in accordance with chapter 28-32 as must any appeal therefrom.
2. If the department of banking and financial institutions finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may, upon written notice, enter an order suspending such license for a period not exceeding thirty days, pending the holding of a hearing as prescribed in this chapter.
3. Any licensee may surrender the licensee's license by delivering it to the department of banking and financial institutions with written notice of its surrender, but such surrender does not affect the licensee's civil or criminal liability for acts committed prior thereto.

SECTION 76. AMENDMENT. Section 13-04.1-10 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-10. Orders and injunctions. Whenever it appears to the department of banking and financial institutions either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter, or by any order of the department issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the department may, in its discretion:

1. Issue any order, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public; provided, however, that any person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if such request is made within ten days after receipt of the order. Such hearing must be held in accordance with chapter 28-32 as must any appeal therefrom.
2. Apply to the district court of any county in this state for an injunction restraining such person and the agents, employees, partners, officers, and directors of such person from continuing such act, practice, or transaction of engaging therein or doing any acts in furtherance thereof,

and for such other and further relief as the facts may warrant. In any proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendants and their agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant. The court may not require the department to post a bond.

SECTION 77. AMENDMENT. Section 13-04.1-11 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-11. Investigations and subpoenas.

1. The department of ~~banking and~~ financial institutions in its discretion:
 - a. May make such public or private investigation within or outside this state as it deems necessary to determine whether any person has violated 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. The licensee shall pay an investigation fee and must be charged by the department of ~~banking and~~ financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visitation provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.
 - b. May require or permit any 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. May publish information concerning any violation of this chapter or any rule or order hereunder.
2. For the purpose of any investigation or proceeding under this chapter, the department of ~~banking and~~ financial institutions may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any 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, any person, the district court, upon application by the department of ~~banking and~~ financial institutions, may issue to the person an order requiring such 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. No person is excused from attending and testifying or from producing any document or record before the department of ~~banking and~~ financial institutions, or in obedience to the subpoena of the department, or in any proceeding instituted by the department, on the ground that the testimony or evidence (documentary or otherwise) required of such

person may tend to incriminate such person or subject such person to a penalty forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which such 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.

SECTION 78. 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 ~~banking and~~ 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.

SECTION 79. AMENDMENT. Section 13-05-01 of the North Dakota Century Code is amended and reenacted as follows:

13-05-01. Administration. The department of ~~banking and~~ financial institutions shall use its facilities to administer and enforce this chapter. Any person or persons delegated to administer this chapter may not have financial interests directly or indirectly in any business which is subject to this chapter.

SECTION 80. AMENDMENT. Section 13-05-03 of the North Dakota Century Code is amended and reenacted as follows:

13-05-03. Application for a collection agency license. Every application for a collection agency license, or for a renewal thereof, must be made upon blanks furnished by the department of ~~banking and~~ financial institutions and must contain the following information:

1. The full name and proposed business name of the applicant.
2. The address where the business is to be conducted.
3. The names and addresses of the applicant and those associated with the applicant. If the applicant is a corporation, the application must contain the names of the officers of the corporation. If the applicant is a limited liability company, the application must contain the names of the managers of the limited liability company.
4. Such additional information which the department of ~~banking and~~ financial institutions shall require.

SECTION 81. AMENDMENT. Section 13-05-05 of the 1999 Supplement to 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 be renewed on the succeeding first day of July upon payment of required annual fees. The department of ~~banking and~~ financial institutions may charge an additional fee of five dollars for the renewal of a license after June thirtieth. 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 82. 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 banking and financial institutions. Insofar as consistent with other provisions of law, the department of ~~banking and~~ financial institutions has the power to:

1. Determine the qualifications of all applicants based on financial responsibility, character, and fitness and issue license if approved.
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 ~~banking and~~ 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 83. AMENDMENT. Subsection 1 of section 13-05-06.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner of ~~banking and~~ financial institutions may issue and serve upon any collection agency officer or employee and upon the collection agency 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 any law, rule, order, or written agreement with the commissioner;
 - b. Engaging in any harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving collection activity; or
 - c. Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.

SECTION 84. AMENDMENT. Section 13-05-08 of the North Dakota Century Code is amended and reenacted as follows:

13-05-08. Revocation of license - Suspension of license - Surrender of license - Preexisting contracts.

1. The department of ~~banking and~~ financial institutions may, if it has reason to believe that grounds for revocation of a license exist, send by registered or certified mail to the licensee, a notice of hearing stating the contemplated action and in general the grounds thereof and setting the time and place for a hearing thereon. Such hearing may not be held less than ten nor more than thirty days from the date of mailing such notice. Within ten days after such hearing, the department of ~~banking and~~ financial institutions shall issue a written order either dismissing the charges or suspending or revoking the license and the grounds therefor. A copy of such written order must be sent to the licensee. A license may be revoked for one or more of the following reasons:
 - a. The licensee has failed to pay the annual license fee.
 - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
 - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of ~~banking and~~ financial institutions in refusing originally to issue such license.
2. If the department of ~~banking and~~ financial institutions finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may, upon written notice, enter an order suspending such license for a period not exceeding thirty days, pending the holding of a hearing as prescribed in this chapter.
3. Any licensee may surrender the licensee's license by delivering it to the department of ~~banking and~~ financial institutions with written notice of its

surrender, but such surrender does not affect the licensee's civil or criminal liability for acts committed prior thereto.

SECTION 85. AMENDMENT. Section 13-05-08.1 of the North Dakota Century Code is amended and reenacted as follows:

13-05-08.1. Biennial report. The commissioner of ~~banking and~~ financial institutions shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

SECTION 86. AMENDMENT. Section 23-21.1-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

1. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult space, whichever is the greater.
2. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches [1066.8 millimeters] in length or ten dollars for each space up to sixty inches [1524 millimeters] in length, whichever is the greater.
3. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each space or crypt in a mausoleum, whichever is the greater, except a mausoleum located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community mausoleum itself shall contain a minimum of twenty percent of the cost of the construction of such public or community mausoleum.
4. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a columbarium, except a columbarium located in a cemetery covered by a perpetual care fund

which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community columbarium itself shall contain a minimum of twenty percent of the cost of the construction of such public or community columbarium.

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

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

SECTION 87. AMENDMENT. Subsection 2 of section 51-17-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Commissioner" means the commissioner of ~~banking and~~ financial institutions.

⁴⁴ **SECTION 88. AMENDMENT.** Subsection 1 of section 54-06-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The following executive and administrative officers and departments shall submit to the governor and the secretary of state reports covering their operations for the two preceding fiscal years, except as otherwise provided by law, not later than the first day of December each year after the regular session of the legislative assembly:
 - a. Secretary of state.
 - b. State auditor.
 - c. Insurance commissioner.
 - d. Attorney general.
 - e. Agriculture commissioner.
 - f. Superintendent of public instruction.
 - g. State tax commissioner.
 - h. Public service commission.
 - i. Department of corrections and rehabilitation.
 - j. Department of transportation.

⁴⁴ Section 54-06-04 was also amended by section 25 of Senate Bill No. 2032, chapter 488, and section 12 of Senate Bill No. 2424, chapter 503.

- k. State department of health.
- l. Department of human services.
- m. Workers compensation bureau.
- n. Office of management and budget.
- o. State treasurer.
- p. Commissioner of labor.
- q. Department of banking and financial institutions.
- r. Department of economic development and finance.
- s. Game and fish department.
- t. Industrial commission.
- u. Job service North Dakota.
- v. Board of university and school lands.

SECTION 89. AMENDMENT. Subsection 16 of section 54-11-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 16. Keep books of the state treasurer open at all times for the inspection of the governor, the state auditor, the commissioner of banking and financial institutions, the office of management and budget, and any committee appointed to examine them by either house of the legislative assembly.

SECTION 90. AMENDMENT. Section 54-11-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-11-07. Suspension of treasurer by governor - Appointment. When a certificate is made to the governor by the state auditor under section 54-11-06, the governor, with the state auditor and the commissioner of banking and financial institutions, shall examine the books, papers, and all matters connected with the office of the state treasurer so suspended. If it appears to the governor, state auditor, and commissioner of banking and financial institutions on examination that the state treasurer has embezzled or converted to the treasurer's own use the public moneys, or has been negligent in keeping the books, or in taking care of public moneys, the governor on the certificate of the state auditor and the commissioner of banking and financial institutions to that effect may remove the state treasurer and appoint another person to fill the place of the suspended state treasurer. The person so appointed shall enter upon the office of state treasurer as provided by law. The governor shall report the removal of the state treasurer to the next succeeding legislative assembly. The state treasurer so appointed shall hold office until the suspended state treasurer is reinstated or a successor is elected and qualified.

SECTION 91. LEGISLATIVE COUNCIL CORRECTION OF STATUTORY REFERENCES. The legislative council may replace appropriate references to the "department of banking and financial institutions" in any measure enacted by the fifty-seventh legislative assembly with references to the "department of financial institutions", as appropriate.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 89

HOUSE BILL NO. 1082

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

BANKING INFORMATION-SHARING AGREEMENTS

AN ACT to amend and reenact subsections 3 and 4 of section 6-01-07.1 of the North Dakota Century Code, relating to information-sharing agreements between the department of banking and financial institutions and other state agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 4 of section 6-01-07.1 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. The commissioner may, ~~in the commissioner's discretion,~~ furnish information to the attorney general, other state agencies, any prosecuting officials requiring the information for use in pursuit of official duties, and legislative investigations under chapter 54-03.2. Information furnished by the commissioner to any third party which is confidential in the commissioner's possession remains confidential in the possession of the third party. Information received by the commissioner from any third party which is confidential in the third party's possession remains confidential in the commissioner's possession.
4. The commissioner may, ~~in the commissioner's discretion,~~ furnish information and enter into sharing agreements as to matters of mutual interest to an official or examiner of the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, office of thrift supervision, comptroller of the currency, insurance commissioner, office of the securities commissioner, or any state bank or credit union supervisors of other states.

Approved March 6, 2001

Filed March 6, 2001

CHAPTER 90

HOUSE BILL NO. 1080

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

BANKING FACILITY RELOCATION FACTORS

AN ACT to amend and reenact section 6-03-13.3 of the North Dakota Century Code, relating to factors the state banking board must consider for a banking facility relocation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-13.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-13.3. Facts considered for approval. Whenever any bank desires to maintain and operate a facility separate and apart from its banking house, pursuant to section 6-03-13.1, or to move a facility previously established to another location, it shall apply to the state banking board or the comptroller of the currency, as the case may be, for such authority and provide the board with such relevant information as the board may reasonably request. In determining whether or not to approve the application for such facility, the banking board shall take into consideration the following facts:

1. The convenience, needs, and welfare of the people of the community and area served.
2. The financial strength of the bank in relation to the cost of establishing and maintaining such separate facility.
3. Whether other banks will be seriously injured by the approval of the application.

When considering an application for relocating an existing facility to another location within the same corporate city limits, the state banking board may consider only subsection 2 as a factor for approval.

Approved March 6, 2001
Filed March 6, 2001

CHAPTER 91

HOUSE BILL NO. 1351

(Representatives N. Johnson, Mahoney)

(Senators Espegard, C. Nelson)

BANK POWERS

AN ACT to amend and reenact section 6-03-38 of the North Dakota Century Code, relating to the powers of state-chartered banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-38 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-38. Assets not to be used in other business - Exceptions - Penalty. No bank, except as otherwise authorized in this title, may employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor may it employ or invest any of its assets or funds in the stock of any corporation, limited liability company, bank, partnership, firm, or association. However, a state bank may, to the extent that banks subject to the laws of the federal government are permitted to do so, purchase shares of stocks, or any other type of securities offered by small business investment companies organized and licensed under Public Law No. 85-699, known as the Small Business Investment Company Act of 1958 [72 Stat. 689; 15 U.S.C. 661 et seq.], and the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, or chapter 10-30, but in no event may any state bank hold securities of small business investment companies in an amount aggregating more than two percent of the bank's capital and surplus, nor in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it is lawful for a bank to make advances for grain or other products in store or in transit to market, and to invest in ~~stocks of subsidiary corporations~~ organizations, when the activities of such ~~corporations~~ organizations are incidental or complementary to banking the bank's activities, with the specific approval of the state banking board for each such subsidiary. The state banking board has the same power to make rules for the subsidiary ~~corporations~~ organizations, and to examine its records and affairs, as it has for other financial corporations under section 6-01-04. If the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, it may direct the bank to divest itself of such subsidiary investments. In addition, the state banking board has power to authorize state banks to engage directly or indirectly in any ~~banking~~ activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this code. Any officer, director, or employee of any bank who invests or uses its funds contrary to this title is guilty of a class A misdemeanor.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 92**HOUSE BILL NO. 1290**
(Representatives Nottestad, Cleary)**CREDIT UNION INVESTMENTS**

AN ACT to amend and reenact subdivision e of subsection 5 of section 6-06-06 of the North Dakota Century Code, relating to the limitation on credit union investment in certain notes or bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision e of subsection 5 of section 6-06-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. In notes or bonds secured by a security interest or lien upon unencumbered personal property ~~in this state~~, if ~~such the~~ investment does not exceed ~~seventy-five~~ ninety percent of the actual cash value of the property secured.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 93**SENATE BILL NO. 2065**

(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial
Institutions)

**CORPORATE CENTRAL CREDIT UNION RECORD
ACCESS**

AN ACT to create and enact a new section to chapter 6-06 of the North Dakota Century Code, relating to access to corporate central credit union records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-06 of the North Dakota Century Code is created and enacted as follows:

Corporate central credit union records. A North Dakota federally chartered corporate credit union must allow access or produce any records requested by the commissioner which the commissioner determines necessary to conduct an examination of the state-chartered credit union. A federally chartered corporate credit union is entitled to be reimbursed for any search and processing time at the rate of ten dollars per hour per person and for copies made of any records at the rate of fifteen cents per page.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 94

SENATE BILL NO. 2265 (Senators Flakoll, Lee, Lyson, Traynor)

BAD CHECK OR DRAFT PENALTY

AN ACT to amend and reenact subsection 2 of section 6-08-16 and subsection 4 of section 6-08-16.2 of the North Dakota Century Code, relating to the civil penalty for issuing a bad check or draft.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁵ **SECTION 1. AMENDMENT.** Subsection 2 of section 6-08-16 of the 1999 Supplement to 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 dollars, which are recoverable by civil action 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 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 ~~one~~ 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.

⁴⁶ **SECTION 2. AMENDMENT.** Subsection 4 of section 6-08-16.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁴⁵ Section 6-08-16 was also amended by section 1 of Senate Bill No. 2190, chapter 95.

⁴⁶ Section 6-08-16.2 was also amended by section 2 of Senate Bill No. 2190, chapter 95.

4. A person who issues an instrument under subsection 2 or 3 also is liable for collection fees or costs, not in excess of twenty dollars per instrument, which are recoverable by civil action by the holder of the instrument, or the holder's agent or representative. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of ~~one~~ two hundred dollars or three times the amount of the instrument.

Approved April 13, 2001

Filed April 13, 2001

CHAPTER 95

SENATE BILL NO. 2190 (Senators Krebsbach, Watne) (Representative Keiser)

NONSUFFICIENT FUNDS AND NO ACCOUNT CHECKS

AN ACT to amend and reenact subsections 2 and 4 of section 6-08-16 and subsections 4 and 6 of section 6-08-16.2 of the North Dakota Century Code, relating to issuing a check or draft without sufficient funds or account and notice of dishonor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁷ **SECTION 1. AMENDMENT.** Subsections 2 and 4 of section 6-08-16 of the 1999 Supplement to the North Dakota Century Code are 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~~ twenty-five dollars, which are recoverable by ~~civil action~~ 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 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 one 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.

4. A notice of dishonor may be mailed by the holder, or the holder's agent or representative, of the check upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Check

Date _____
Name of Issuer _____

⁴⁷ Section 6-08-16 was also amended by section 1 of Senate Bill No. 2265, chapter 94.

Street Address _____
 City and State _____
 You are according to law notified that a check dated _____,
 _____, drawn on the _____ Bank of
 _____ in the amount of _____ has been
 returned unpaid with the notation the payment has been refused
 because of nonsufficient funds. Within ten days from the
 receipt of this notice, you must pay or tender to

 (Holder or Agent or Representative)
 sufficient moneys to pay such instrument in full and any
 collection fees or costs not in excess of ~~twenty~~
twenty-five dollars.

The notice of dishonor also may contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

⁴⁸ **SECTION 2. AMENDMENT.** Subsections 4 and 6 of section 6-08-16.2 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. A person who issues an instrument under subsection 2 or 3 also is liable for collection fees or costs, not in excess of ~~twenty~~ twenty-five dollars per instrument, which are recoverable by ~~civil action~~ by the holder of the instrument, or the holder's agent or representative. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.
6. A notice of dishonor may be mailed by the holder, or the holder's agent or representative, of the instrument upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Instrument

Date _____
 Name of Issuer _____
 Street Address _____
 City and State _____
 You are according to law notified that an instrument dated
 _____, _____, drawn on the _____
 Bank of _____ in the amount of _____
 has been returned unpaid with the notation the payment has
 been refused because (of nonsufficient funds) (the drawer does
 not have an account). Within ten days from the receipt of

⁴⁸ Section 6-08-16.2 was also amended by section 2 of Senate Bill No. 2265, chapter 94.

this notice, you must pay or tender to _____

(Holder)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ~~twenty~~ twenty-five dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 96

HOUSE BILL NO. 1375

(Representative Boucher)

FUNDS TRANSFER DISCLOSURE AND LIABILITY

AN ACT to provide for disclosures of funds transfers by wire or automated clearinghouse to a financial institution and liability for funds transfers that are not authorized by the financial institution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Funds transfers - Disclosure to financial institution required. A person may not direct, cause, arrange, or permit a transfer of funds by wire or automated clearinghouse into a financial institution account that is not owned by the intended beneficiary of the funds transfer unless the person has first disclosed to the financial institution the fact that the account is not owned by the intended beneficiary of the funds transfer and has obtained the express, written consent of the financial institution for each transfer. A person who directs, causes, arranges, or permits a transfer of funds by wire or automated clearinghouse into a financial institution account that is not owned by the intended beneficiary of the funds transfer may not withdraw the funds without the written consent of the account holder and may not recover from the financial institution any damages, costs, or expenditures, including reasonable attorney fees, incurred in connection with the transfer or the use or withdrawal of the transferred funds by the owner of the account.

SECTION 2. Unauthorized funds transfer - Liability. A person who directs, causes, arranges, or permits a transfer of funds by wire or automated clearinghouse into a financial institution account that is not owned by the beneficiary of the funds transfer is liable to the financial institution for all damages, costs, or expenditures, including reasonable attorney fees, which the financial institution suffers or incurs in connection with the unauthorized funds transfer transaction or any use or withdrawal of the funds by the owner of the account.

Approved March 19, 2001

Filed March 19, 2001

CHAPTER 97

SENATE BILL NO. 2191 (Senators Krebsbach, Traynor)

FINANCIAL INFORMATION DISCLOSURE

AN ACT to create and enact a new subsection to section 6-08.1-02 and a new section to chapter 6-08.1 of the North Dakota Century Code, relating to disclosure of financial information by financial institutions and notification of privacy policies; to amend and reenact section 6-08.1-01 of the North Dakota Century Code, relating to the definition of a customer and customer information; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁹ **SECTION 1. AMENDMENT.** Section 6-08.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08.1-01. Definitions. As used in this chapter:

1. "Customer" means, with respect to a financial institution, any person who has transacted or is transacting business with, or has used or is using the services of, individual or authorized representative of an individual to whom a financial institution, or for whom a financial institution has acted provides a product or service for personal, family, or household use, including that of acting 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 nonpublic personal information maintained by or for a financial institution which is derived from a customer relationship between the financial institution and a customer of the financial institution and is identified with the customer.
3. "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, a bank, including the Bank of North Dakota, a savings bank, a trust company, a savings and loan association, or a credit union.
4. "Financial institution regulatory agency" means any of the following:

⁴⁹ Section 6-08.1-01 was also amended by section 25 of Senate Bill No. 2164, chapter 88.

- a. The federal deposit insurance corporation.
 - b. The federal savings and loan insurance corporation.
 - c. The national credit union administration.
 - d. The federal reserve board.
 - e. The United States comptroller of the currency.
 - f. The department of banking and financial institutions.
 - g. The federal home loan bank board.
5. "Governmental agency" means any agency or department of this state, or any authorized officer, employee, or agent of an agency or department of this state.
 6. "Law enforcement agency" means any agency or department of this state or of any political subdivision of this state authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
 7. "Person" means any individual, partnership, corporation, limited liability company, association, trust, or other legal entity.

SECTION 2. A new subsection to section 6-08.1-02 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

A disclosure of customer information by a financial institution to a nonaffiliated third party, if the disclosure is subject to federal law on the date of the disclosure and the financial institution complies with applicable federal law in making the disclosure.

SECTION 3. A new section to chapter 6-08.1 of the North Dakota Century Code is created and enacted as follows:

Agricultural and commercial accounts.

1. A financial institution shall notify the financial institution's agricultural and commercial customers in this state of the financial institution's privacy policies and practices relating to agricultural and commercial accounts.
2. If the financial institution discloses nonpublic information about agricultural or commercial accounts to nonaffiliated third parties, the financial institution shall annually allow agricultural and commercial customers to not agree to disclosing that information. An agricultural or commercial customer also may agree to the disclosure of nonpublic information.
3. The exceptions in section 502(b)(2) of the Gramm Leach Bliley Financial Service Modernization Act [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802] and section 6-08.1-02 apply to agricultural and commercial accounts.

SECTION 4. EFFECTIVE DATE. This Act becomes effective on July 1, 2001.

SECTION 5. EXPIRATION DATE. Section 3 of this Act is effective through July 31, 2003, and after that date is ineffective.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 98

HOUSE BILL NO. 1329

(Representatives Jensen, Ekstrom, Kingsbury)
(Senators Christenson, Espegard)

FINANCIAL INSTITUTION EMPLOYEE REPORT IMMUNITY

AN ACT to provide immunity from suit for a financial institution or financial institution employee that makes a good-faith report of suspected exploitation of a disabled or vulnerable elderly adult; and to create and enact a new subsection to section 6-08.1-03 of the North Dakota Century Code, relating to the disclosure by a financial institution of suspected exploitation of a disabled or vulnerable elderly adult to a government agency or law enforcement agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-08.1-03 of the North Dakota Century Code is created and enacted as follows:

For purposes of reporting suspected exploitation of a disabled adult or vulnerable elderly adult as defined by section 12.1-31-07. Nothing in this subsection may be construed to impose upon a financial institution a duty to investigate an alleged or suspected exploitation of a disabled adult or vulnerable elderly adult or to make any report to a government agency or law enforcement agency.

SECTION 2. Immunity from liability. A financial institution or financial institution employee participating in good faith in the making of a report of suspected exploitation of a disabled adult or vulnerable elderly adult to a government agency or law enforcement agency, assisting in an investigation of suspected exploitation of a disabled adult or vulnerable elderly adult by a government agency or law enforcement agency, or furnishing information to a government agency or law enforcement agency about suspected exploitation of a disabled adult or vulnerable elderly adult is immune from any liability, civil or criminal, that might otherwise result from reporting a suspected case of exploitation of a disabled adult or vulnerable elderly adult. For purposes of any proceeding, civil or criminal, the good faith of a financial institution making a report of suspected exploitation of a disabled adult or vulnerable elderly adult to a government agency or law enforcement agency must be presumed.

Approved March 27, 2001
Filed March 27, 2001

CHAPTER 99

SENATE BILL NO. 2194

(Senators Klein, Kroeplin, Nichols)
(Representatives D. Johnson, Weisz)

BEGINNING FARMER LOANS

AN ACT to amend and reenact section 6-09-15.5 of the North Dakota Century Code, relating to Bank of North Dakota loans to beginning farmers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-15.5 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09-15.5. Bank loans to beginning farmers - Revolving loan fund - Requirements.

1. A revolving loan fund must be maintained in the Bank of North Dakota for the purpose of making 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 ~~hereby~~ appropriated for the purpose of providing loans and to supplement the interest rate on loans to beginning farmers made by the Bank of North Dakota under subdivision c of subsection 1 of section 6-09-15 and in accordance with ~~the provisions of~~ this section.
2. The revolving loan fund and loans made from the fund must be administered and supervised by the Bank of North Dakota. The Bank may deduct a service fee for administering the fund from interest payments received on loans. An application for a loan from the fund must be made to the Bank and, upon approval, a loan must be made from the fund in accordance with ~~the provisions of~~ this section.
3. A loan made from the fund may not exceed eighty percent of the appraised value of the agricultural ~~real estate to be acquired with the loan proceeds~~ 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 ~~as deemed~~ necessary to make a loan under this section. ~~The Bank shall take a first mortgage as security for a loan from the fund~~ 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 is ~~responsible for contracting~~ 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.

Approved April 17, 2001
Filed April 17, 2001

CHAPTER 100**HOUSE BILL NO. 1339**
(Representative Klemin)**BANK OF NORTH DAKOTA REAL ESTATE SALES AND
LEASING**

AN ACT to amend and reenact section 6-09-37 of the North Dakota Century Code, relating to the sale and leasing of agricultural real estate by the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-37 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09-37. Sale and leasing of acquired agricultural real estate. The sale and leasing of agricultural real estate with an appraised value of ten thousand dollars or more acquired by the Bank of North Dakota through foreclosure or deed in lieu of foreclosure must be done in accordance with chapter 15-07 or 15-09 and ~~rules of the board of university and school lands~~ policies adopted by the industrial commission. The sale and leasing of agricultural real estate with an appraised value of less than ten thousand dollars, acquired by the Bank of North Dakota through foreclosure or deed in lieu of foreclosure, may be done in a manner as the Bank determines is appropriate given the circumstances. In the case of a lease by the party holding the right of redemption, that party has the right to purchase at any time.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 101

SENATE BILL NO. 2085

(Government and Veterans Affairs Committee)
(At the request of the Municipal Bond Bank)

MUNICIPAL BOND BANK LOAN AND BOND AGREEMENTS

AN ACT to create and enact a new section to chapter 6-09.4 of the North Dakota Century Code, relating to administrative agreements for loans and the issuance of bonds by the municipal bond bank on behalf of state agencies authorized to make loans or to allocate or issue bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Administrative agreements with state agencies. The bond bank and any state agency authorized by state or federal law to make an allocation of bonds or bonding authority or to make loans, or to issue bonds to obtain funds for the purpose of making loans, to political subdivisions may enter into an administrative agreement, which may authorize the bond bank to administer the loan or bond program for the state agency. The agreement may delegate to the bond bank the authority to make loans, or to issue bonds to obtain funds for the purpose of making loans, to political subdivisions.

Approved March 22, 2001

Filed March 22, 2001

CHAPTER 102

SENATE BILL NO. 2216 (Senators Wanzek, Tomac) (Representatives D. Johnson, Mueller)

AGRICULTURAL MEDIATION SERVICE EXTENSION

AN ACT to amend and reenact section 6-09.10-03 of the North Dakota Century Code, relating to the expiration date for the North Dakota agricultural mediation service; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.10-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-03. North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees. The board shall meet at the call of the chair, as is necessary to fulfill its duties under this chapter. The agriculture commissioner shall administer the agricultural mediation service. The commissioner shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff, negotiators, and mediators who may mediate disputes involving farmers and others, either of whom may request assistance. The board may charge the farmer and others a reasonable fee for any assistance, provided the fees are used to continue the service ~~until June 30, 2004~~. Fees charged to the farmer's creditors are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive sixty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

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

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 103

SENATE BILL NO. 2349

(Senators Holmberg, Bowman, Espegard, Grindberg, Heitkamp, Krebsbach)

BEGINNING ENTREPRENEUR PROGRAM LOANS

AN ACT to amend and reenact section 6-09.15-03 of the North Dakota Century Code, relating to loans under the beginning entrepreneur loan guarantee program; to provide for reports on the beginning entrepreneur loan guarantee program; to provide a statement of legislative intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.15-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.15-03. Application for guarantee - Term - Annual fee. A lender may apply to the Bank of North Dakota for a loan guarantee for a loan of up to ~~seventy five~~ one hundred thousand dollars. The Bank may approve a guarantee of a loan of up to five thousand dollars to a beginning entrepreneur for use by the beginning entrepreneur for accounting, legal, and business planning and other consulting or advisory services in planning for the establishment of a qualified revenue-producing enterprise. The Bank may approve a guarantee of a loan of up to twenty-five thousand dollars to a beginning entrepreneur without requiring the beginning entrepreneur to provide collateral for the loan. The term of a loan guarantee may not exceed five years. The Bank may charge a lender an annual fee during the term of a loan guarantee. The Bank may not guarantee more than ~~five hundred thousand~~ four million dollars in loans outstanding under the beginning entrepreneur loan guarantee program.

SECTION 2. REPORT ON THE BEGINNING ENTREPRENEUR LOAN GUARANTEE PROGRAM. The Bank of North Dakota shall report the status of the beginning entrepreneur loan guarantee program to the standing appropriations committee of each house of the fifty-eighth legislative assembly at the time of the Bank's appropriations hearing.

SECTION 3. LEGISLATIVE INTENT - BUSINESS STARTUP INFORMATION. It is the intent of the legislative assembly that the Bank of North Dakota provide each beginning entrepreneur who requests a loan guarantee information regarding other resources and services provided by local, state, federal, or private entities that are available to assist in the startup of a new business.

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

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 104

SENATE BILL NO. 2211

(Senators Klein, D. Mathern)

(Representative Wald)

SELF-CRITICAL FINANCIAL INSTITUTION ANALYSIS PRIVILEGE

AN ACT to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to the provision of a self-critical financial institution analysis privilege.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the commissioner of banking and financial institutions.
2. "Compliance audit" means a voluntary, internal evaluation, review, assessment, audit, or investigation for the purpose of identifying or preventing noncompliance with, or promoting compliance with, laws, regulations, orders, or industry or professional standards, which is conducted by or on behalf of a financial institution.
3. "Compliance self-critical analysis audit document" means a document prepared as a result of or in connection with a financial institution's compliance audit. A compliance self-critical analysis audit document may include a written response to the findings of a compliance audit. A compliance self-critical analysis audit document may include, as applicable, field notes and records of observations, work papers, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, exhibits, computer-generated or electronically recorded information, phone records, maps, charts, graphs, and surveys, provided this supporting information is collected or developed for the primary purpose and in the course of a compliance audit. A compliance self-critical analysis audit document also includes:
 - a. A compliance audit report prepared by an auditor, who may be an employee of the financial institution or an independent contractor, which may include the scope of the audit, the information gained in the audit, and conclusions and recommendations, with exhibits and appendices;
 - b. Memoranda and documents analyzing portions or all of the compliance audit report and discussing potential implementation issues;
 - c. An implementation plan that addresses correcting past noncompliance, improving current compliance, and preventing future noncompliance; or

- d. Analytic data generated in the course of conducting the compliance audit.
4. "Financial institution" means any organization authorized to do business under state and federal laws relating to financial institutions, including a bank, including the Bank of North Dakota, a savings bank, a trust company, a savings and loan association, or a credit union.

SECTION 2. Self-critical analysis privilege created - Scope. A compliance self-critical analysis privilege is created to protect the confidentiality of compliance self-critical analysis documents or communications in regard to their content relating to voluntary internal compliance audits conducted by financial institutions and persons in regard to activities regulated under title 6 or federal law, both to conduct voluntary internal audits of its compliance programs and management systems, and to assess and improve compliance with state and federal statutes, rules, and orders. The compliance self-critical analysis privilege applies to all litigation or administrative proceedings pending on August 1, 2001.

SECTION 3. Compliance self-critical analysis document not discoverable or admissible. Except as provided in this chapter, a compliance self-critical analysis audit document is privileged information and is not discoverable or admissible evidence in any legal action in any civil, criminal, or administrative proceeding. The privilege is a matter of substantive law of this state and is not merely a procedural matter governing administrative, civil, or criminal procedures in the courts of this state.

SECTION 4. Application of privilege. If a financial institution, person, or entity performs or directs the performance of a compliance audit, an officer, employee, or agent involved with the compliance audit, or any consultant who is hired for the purpose of performing the compliance audit, may not be examined in any civil, criminal, or administrative proceeding as to the compliance audit or any compliance self-critical analysis audit document. This section does not apply if it is determined under sections 6 or 7 of this Act that the privilege does not apply.

SECTION 5. Submission to commissioner.

1. Upon request of the commissioner, a financial institution must submit a compliance self-critical analysis audit document to the commissioner, or the commissioner's designee, as a confidential document under the provisions of section 6-01-07, without waiving the privilege set forth in this chapter to which the financial institution would otherwise be entitled. However, the provisions of section 6-01-07 permitting the commissioner to release confidential documents and make them accessible to federal financial institution regulatory agencies does not apply to the compliance self-critical analysis audit documents voluntarily submitted. To the extent the commissioner has the authority to compel the disclosure of a compliance self-critical analysis audit document under other provisions of applicable law, any report furnished to the commissioner may not be provided to any other person or entity and must be accorded the same confidentiality and other protections as provided above for voluntarily submitted documents. Any use of a compliance self-critical analysis audit document furnished as a result of a request of the commissioner, whether under a claim of authority to compel disclosure or not, is limited to determining whether any disclosed defects in a financial institution's policies or procedures or inappropriate treatment of customers has been remedied or that an

appropriate plan for their remedy is in place. The commissioner may not impose any type of administrative fine or penalty as to any area addressed or matter covered in a compliance self-critical analysis audit document furnished at the commissioner's request, except where there is clear and convincing evidence that the financial institution failed to undertake reasonable corrective action, eliminate inappropriate treatment of customers, or failed to implement an appropriate plan to rectify any noncompliance with state and federal statutes, rules, and orders.

2. A financial institution's compliance self-critical analysis audit document submitted to the commissioner remains subject to all applicable statutory or common-law privileges including the work product doctrine, attorney-client privilege, or the subsequent remedial measures exclusion. A compliance self-critical analysis audit document submitted to and in the possession of the commissioner remains the property of the financial institution and is not subject to any disclosure or production under section 44-04-18.
3. Disclosure of a compliance self-critical analysis audit document to a governmental agency, whether voluntary or pursuant to compulsion of law, does not constitute a waiver of the privilege with respect to any other person or any other government agency.

SECTION 6. Waiver of privilege by financial institution - Grounds for determination of privilege - Civil, administrative, or criminal proceedings.

1. The self-critical analysis privilege does not apply to the extent that it is expressly waived by the financial institution that prepared or caused to be prepared the compliance self-critical analysis audit document.
2. In a civil or administrative proceeding, a court of record, after an in-camera review, may require disclosure of material for which the privilege is asserted, if the court determines one of the following:
 - a. The privilege is asserted for a fraudulent purpose; or
 - b. The material is not subject to the privilege.
3. In a criminal proceeding, a court of record, after an in-camera review, may require disclosure of material for which the privilege is asserted, if the court determines one of the following:
 - a. The privilege is asserted for a fraudulent purpose;
 - b. The material is not subject to the privilege; or
 - c. The material contains evidence relevant to commission of a criminal offense, and all three of the following factors are present:
 - (1) The commissioner, state's attorney, or attorney general has a compelling need for the information;
 - (2) The information is not otherwise available; and

- (3) The commissioner, state's attorney, or attorney general is unable to obtain the substantial equivalent of the information by any other means without incurring prohibitive cost and delay.

SECTION 7. Determination of privilege - Procedure.

1. If a person seeks from a financial institution communications involving a compliance audit or any compliance self-critical analysis audit document during the course of a pending civil or criminal proceeding, the financial institution may assert the self-critical analysis privilege and provide the information set forth in subsection 6 during the course of those proceedings just as any other privilege is asserted in the courts of this state. If the court is required to make a determination as to the privilege, the court shall follow the procedure and conditions set forth in subsection 5.
2. If there is a pending administrative proceeding, or there is no pending civil or criminal proceeding, the commissioner, state's attorney, or attorney general may serve on a financial institution a written request by certified mail for disclosure of a compliance self-critical analysis audit document. Within thirty days after the commissioner, state's attorney, or attorney general serves on a financial institution a written request by certified mail for disclosure of a compliance self-critical analysis audit document, the financial institution that prepared or caused the document to be prepared may file with the appropriate court a petition requesting an in-camera hearing on whether the compliance self-critical analysis audit document or portions of the document are privileged under this chapter or subject to disclosure. The court has jurisdiction over a petition filed by a financial institution under this subsection requesting an in-camera hearing on whether the compliance self-critical analysis document or portions of the document are privileged or subject to disclosure. Failure by the financial institution to file a petition waives the privilege for only the specific request made.
3. A financial institution asserting the compliance self-critical analysis privilege in response to a request for disclosure under this section shall include in its request for an in-camera hearing all of the information set forth in subsection 6.
4. Upon the filing of a petition under this section, the court shall issue an order scheduling, within forty-five days after the filing of the petition, an in-camera hearing to determine whether the compliance self-critical analysis audit document or portions of the document are privileged under this chapter or subject to disclosure.
5. The court, after an in-camera review, may require disclosure of material for which the privilege is asserted if the court determines, based upon its in-camera review, that any one of the conditions set forth in subsection 2 of section 6 of this Act is applicable as to a civil or administrative proceeding or that any one of the conditions set forth in subsection 3 of section 6 of this Act is applicable as to a criminal proceeding. Upon making such determination, the court may only compel the disclosure of those portions of a compliance self-critical analysis document relevant to issues in dispute in the underlying proceeding. A compelled disclosure may not be considered to be a

public document or be deemed to be a waiver of the privilege for any other civil, criminal, or administrative proceeding. A financial institution unsuccessfully opposing disclosure may apply to the court for an appropriate order protecting the document from further disclosure.

6. A financial institution asserting the compliance self-critical analysis privilege in response to a request for disclosure under this section shall provide at the time of making and filing any objection to the disclosure all of the following information:
 - a. The date of the compliance self-critical analysis audit document;
 - b. The identity of the entity conducting the audit;
 - c. The general nature of the activities covered by the compliance audit; and
 - d. An identification of the portions of the compliance self-critical analysis audit document for which the privilege is being asserted.

SECTION 8. Privilege - Burden of proof - Stipulation. A financial institution asserting the compliance self-critical analysis privilege set forth in this chapter has the burden of demonstrating the applicability of the privilege. Once a financial institution has established the applicability of the privilege, a party seeking disclosure has the burden of proving that the privilege is asserted for a fraudulent purpose. The commissioner, state's attorney, or attorney general seeking disclosure of the privilege has the burden of proving the elements set forth in subdivisions a and c of subsection 3 of section 6 of this Act.

The parties may at any time stipulate in proceedings under sections 6 or 7 of this Act to entry of an order directing whether the specific information contained in a compliance self-critical analysis audit document is or is not subject to the privilege provided under this chapter. Any such stipulation may be limited to the instant proceeding and, absent specific language to the contrary, is not applicable to any other proceeding.

SECTION 9. Nonapplication of privilege. The self-critical analysis privilege set forth in this chapter does not extend to:

1. Documents, communications, data, reports, or other information expressly required to be collected, developed, maintained, or reported to a regulatory agency pursuant to this title, or other federal or state law;
2. Information obtained by observation or monitoring by any regulatory agency; or
3. Information obtained from a source independent of the compliance audit.

Approved March 19, 2001
Filed March 19, 2001

CARRIAGE

CHAPTER 105

SENATE BILL NO. 2309

(Senators Stenehjem, Cook, O'Connell)
(Representatives Grumbo, Hawken, Price)

CONTRACT CARRIER SAFETY STANDARDS

AN ACT to amend and reenact section 8-02-08 of the North Dakota Century Code, relating to safety standards for passenger contract carriers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 8-02-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8-02-08. Safety standards for passenger contract carriers - Penalty.

1. The highway patrol shall establish minimum safety standards for passenger contract carriers transporting fewer than fifteen passengers. The safety standards must include provisions for driver qualifications; motor vehicle inspection, maintenance, and repair; hours of service; drug and alcohol testing; and insurance. Insurance safety standards for contract carriers that carry employees by contract with the employer must include uninsured and underinsured motorist coverage of not less than one million dollars per occurrence for the benefit of the passengers being transported. Coverage may be satisfied through a primary or an excess policy.
2. The highway patrol shall issue a permit to a passenger contract carrier transporting fewer than fifteen passengers which provides proof of compliance with the safety standards.
3. A person may not engage in the business of a passenger contract carrier transporting fewer than fifteen passengers without obtaining and displaying in each vehicle a permit issued under this section.
4. In this section, "contract carrier" means a person engaged in the business of carrying passengers for hire and in that business does not operate on a fixed route. The term does not include a person who makes a single daily round trip to commute to and from work, a person transporting only schoolchildren and teachers, a person operating ambulance or funeral services, a person who on occasion and not as a regular business enterprise transports one or more passengers for pay, a person operating stretched sedan-type limousines, nor a person operating a taxicab service using vehicles with a seating capacity of fewer than seven passengers.

5. A contract carrier that willfully violates this section or rules adopted to implement this section is guilty of an infraction.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 106

HOUSE BILL NO. 1408

(Representatives Koppelman, M. Klein, Mahoney, Weisz)
(Senators Robinson, Wardner)

MIDWEST INTERSTATE PASSENGER RAIL COMPACT

AN ACT to provide for adoption of the midwest interstate passenger rail compact; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Midwest interstate passenger rail compact. The midwest interstate passenger rail compact is enacted by this state and entered with all other states legally joining therein in the form substantially as follows:

ARTICLE 1 - STATEMENT OF PURPOSE

The purposes of this compact are, through joint or cooperative action:

1. To promote development and implementation of improvements to intercity passenger rail service in the midwest;
2. To coordinate interaction among midwestern state-elected officials and their designees on passenger rail issues;
3. To promote development and implementation of long-range plans for high-speed rail passenger service in the midwest and among the regions of the United States;
4. To work with the public and private sectors at the federal, state, and local levels to ensure coordination among the various entities having an interest in passenger rail service and to promote midwestern interests regarding passenger rail; and
5. To support efforts of transportation agencies involved in developing and implementing passenger rail service in the midwest.

ARTICLE 2 - COMMISSION

To further the purposes of the compact, a commission is created to carry out the duties specified in this compact.

ARTICLE 3 - MEMBERSHIP

1. The manner of appointment of commission members, terms of office consistent with the terms of this compact, provisions for removal and suspension, and manner of appointment to fill vacancies must be determined by each party state pursuant to its laws, but each commissioner must be a resident of the state of appointment. Commission members shall serve without compensation from the commission.

2. The commission consists of four resident members of each state as follows: the governor or the governor's designee, who shall serve during the tenure of office of the governor, or until a successor is named; one member of the private sector, appointed by the governor to serve during the tenure of the office of the governor, or until a successor is named; and two legislators, one from each house appointed by the chairman of the legislative council to serve two-year terms, or until successors are appointed. All vacancies must be filled in accordance with the laws of the appointing states. Any commissioner appointed to fill a vacancy shall serve until the end of the incomplete term. Each member state must have equal voting privileges, as determined by the commission bylaws.

ARTICLE 4 - POWERS AND DUTIES

1. The duties of the commission are to:
 - a. Advocate for the funding and authorization necessary to make passenger rail improvements a reality for the region;
 - b. Identify and seek to develop ways that states can form partnerships, including with rail industry and labor, to implement improved passenger rail in the region;
 - c. Seek development of a long-term, interstate plan for high-speed rail passenger service implementation;
 - d. Cooperate with other agencies, regions, and entities to ensure that the midwest is adequately represented and integrated into national plans for passenger rail development;
 - e. Adopt bylaws governing the activities and procedures of the commission and addressing the powers and duties of officers, the voting rights of commission members, voting procedures, commission business, and any other purposes necessary to fulfill the duties of the commission;
 - f. Expend funds as required to carry out the powers and duties of the commission; and
 - g. Report on the activities of the commission to the governor of each member state on an annual basis.
2. In addition to its exercise of these duties, the commission is empowered to:
 - a. Provide multistate advocacy necessary to implement passenger rail systems or plans, as approved by the commission;
 - b. Work with local elected officials, economic development planning organizations, and similar entities to raise the visibility of passenger rail service benefits and needs;
 - c. Educate other state officials, federal agencies, other elected officials, and the public on the advantages of passenger rails as an integral part of an intermodal transportation system in the region;

- d. Work with federal agency officials and members of Congress to ensure the funding and authorization necessary to develop a long-term interstate plan for high-speed rail passenger service implementation;
- e. Make recommendations to member states;
- f. If requested by each state participating in a particular project and under the terms of a formal agreement approved by the participating states and the commission, implement or provide overview for specific rail projects;
- g. Establish an office and hire staff as necessary;
- h. Contract for or provide services;
- i. Assess dues, in accordance with the terms of this compact;
- j. Conduct research; and
- k. Establish communities.

ARTICLE 5 - OFFICERS

The commission annually shall elect from among its members a chairman, a vice chairman who is not a resident of the state represented by the chairman, and others as approved in the commission bylaws. The officers shall perform functions and exercise powers as are specified in the commission bylaws.

ARTICLE 6 - MEETINGS AND ADMINISTRATION

The commission shall meet at least once in each calendar year and at other times as may be determined by the commission. Commission business must be conducted in accordance with the procedures and voting rights specified in the bylaws.

ARTICLE 7 - FINANCE

Except as otherwise provided, the moneys necessary to finance the general operations of the commission in exercising its duties, responsibilities, and powers must be appropriated to the commission by the compacting states, when authorized by the respective legislatures, by equal apportionment among the compacting states. This compact does not commit a member state to participate in financing a rail project except as provided by law of a member state.

The commission may accept, for any of its purposes and functions, donations, gifts, grants, and appropriations of money, equipment, supplies, materials, and services from the federal government, from any party state or from any state agency or political subdivision, or from any person. All expenses incurred by the commission must be paid by the commission out of the funds available to it. The commission may not issue any debt instrument. The commission shall submit to the officer designated by the laws of each party state, periodically as required by the laws of each party state, a budget of its actual past and estimated future expenditures.

ARTICLE 8 - ENACTMENT, EFFECTIVE DATE, AND AMENDMENTS

The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin are eligible to join this compact. Upon approval of the commission, according to its bylaws, other states may be declared eligible to join the compact. As to any eligible party state, this compact becomes effective when its legislature has enacted the same into law; provided that it may not become initially effective until enacted into law by any three party states. Amendments to the compact become effective upon their enactment by the legislatures of all compacting states.

ARTICLE 9 - WITHDRAWAL, DEFAULT, AND TERMINATION

Withdrawal from this compact must be by enactment of a statute repealing the compact and must take effect one year after the effective date of the repeal. A withdrawing state is liable for any obligations that it may have incurred before the effective date of withdrawal. If any compacting state at any time defaults in the performance of any of its obligations, assumed or imposed, in accordance with this compact, all rights, privileges, and benefits conferred by this compact or agreements under this compact must be suspended from the effective date of the default as fixed by the commission and the commission shall stipulate the conditions and maximum time for compliance under which the defaulting state may resume its regular status. Unless the default is remedied under the stipulations and within the time period set by the commission, this compact may be terminated with respect to the defaulting state by affirmative vote of a majority of the other commission members. Any defaulting state may be reinstated, upon vote of the commission, by performing all acts and obligations as stipulated by the commission.

ARTICLE 10 - CONSTRUCTION AND SEVERABILITY

The provisions of this compact are severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any compacting state or of the United States or the applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability to any government, agency, person, or circumstance is not affected. If this compact is held contrary to the constitution of any compacting state, the compact remains in effect as to the remaining states and in effect as to the state affected as to all severable matters. This compact must be liberally construed to effectuate its purposes.

SECTION 2. EXPIRATION DATE. This Act is effective through August 1, 2003, and after that date is ineffective.

Approved April 5, 2001
Filed April 5, 2001

CONTRACTS AND OBLIGATIONS

CHAPTER 107

SENATE BILL NO. 2318

(Senators Klein, Tallackson)

(Representative Kasper)

PROPERTY SERVICE CONTRACTS

AN ACT to provide for property service contracts; to amend and reenact sections 26.1-40-18 and 26.1-40-22 of the North Dakota Century Code, relating to automobile warranties; and to repeal sections 26.1-40-19, 26.1-40-20, and 26.1-40-21 of the North Dakota Century Code, relating to automobile warranty insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Property service contracts - Exemption.

1. The marketing, selling, offering for sale, issuing, making, providing, or proposing to make and the administering of a property service contract is not subject to the provisions of title 26.1.
2. A property service contract is a contract or agreement for a separately stated consideration, for a specific duration, to provide for the repair, replacement, or maintenance or for the indemnification for the repair, replacement, or maintenance of new or used property if an operational or structural failure is due to a defect in materials, manufacturing, or normal wear and tear. Property covered under a property service contract may include motor vehicles; residential appliances; residential systems, including plumbing, electrical, heating, cooling, and ventilation; and other residential property. The contract may provide coverage for:
 - a. Damage to property resulting from power surges;
 - b. Accidental damage to property resulting from handling; and
 - c. Payment of indemnity for incidental damages, such as food spoilage, towing, and rental and emergency road service.

SECTION 2. AMENDMENT. Section 26.1-40-18 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-18. Automobile warranties construed. An automobile dealer or a third-party administrator who issues an automobile warranty issued by anyone other than the automobile manufacturer or dealer is a contract of insurance and all warranties must be on a contract form prescribed or approved by the commissioner, automobile mechanical breakdown contract, or automobile service contract shall maintain a policy of insurance which provides coverage for the dealer's or administrator's contractual obligation.

SECTION 3. AMENDMENT. Section 26.1-40-22 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-22. Penalty. Any person violating ~~sections~~ section 26.1-40-18 ~~through 26.1-40-21~~ is guilty of a class A misdemeanor.

SECTION 4. REPEAL. Sections 26.1-40-19, 26.1-40-20, and 26.1-40-21 of the North Dakota Century Code are repealed.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 108

HOUSE BILL NO. 1106

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

UNIFORM ELECTRONIC TRANSACTIONS ACT

AN ACT to adopt the Uniform Electronic Transactions Act, relating to electronic records and electronic signatures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act:

1. "Agreement" means the bargain of the parties in fact, as found in the parties' language or inferred from other circumstances and from rules and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.
2. "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.
3. "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.
4. "Contract" means the total legal obligation resulting from the parties' agreement as affected by this Act and other applicable law.
5. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
6. "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part, without review or action by an individual.
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. "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the state.

10. "Information" means data, text, images, sounds, codes, computer programs, software, data bases, or the like.
11. "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.
12. "Record" means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.
13. "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.
14. "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.
15. "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

SECTION 2. Scope.

1. Except as otherwise provided in subsection 2, this Act applies to electronic records and electronic signatures relating to a transaction.
2. This Act does not apply to a transaction to the extent the transaction is governed by:
 - a. A law governing the creation and execution of wills, codicils, or testamentary trusts;
 - b. The Uniform Commercial Code other than sections 41-01-07 and 41-01-16 and chapters 41-02 and 41-02.1; and
 - c. Chapters 41-03, 41-04, 41-04.1, 41-05, 41-07, 41-08, or 41-09.
3. This Act applies to an electronic record or electronic signature otherwise excluded from the application of this Act under subsection 2 to the extent it is governed by a law other than those specified in subsection 2.
4. A transaction subject to this Act is also subject to other applicable substantive law.

SECTION 3. Prospective application. This Act applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored after July 31, 2001.

SECTION 4. Use of electronic records and electronic signatures - Variation by agreement.

1. This Act does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.
2. This Act applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct transactions by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.
3. If a party agrees to conduct a transaction by electronic means, this Act does not prohibit the party from refusing to conduct other transactions by electronic means. This subsection may not be varied by agreement.
4. Except as otherwise provided in this Act, the effect of any of this Act's provisions may be varied by agreement. The presence in certain provisions of this Act of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.
5. Whether an electronic record or electronic signature has legal consequences is determined by this Act and other applicable law.

SECTION 5. Construction and application. This Act must be construed and applied:

1. To facilitate electronic transactions consistent with other applicable law;
2. To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
3. To effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

SECTION 6. Legal recognition of electronic records, electronic signatures, and electronic contracts.

1. A record or signature may not be denied legal effect or enforceability solely because the record or signature is in electronic form.
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in the contract's formation.
3. If a law requires a record to be in writing, an electronic record satisfies the law.
4. If a law requires a signature, an electronic signature satisfies the law.

SECTION 7. Provision of information in writing - Presentation of records.

1. If parties have agreed to conduct transactions by electronic means and a law requires a person to provide, send, or deliver information in writing

to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or the sender's information processing system inhibits the ability of the recipient to print or store the electronic record.

2. If a law other than this Act requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following rules apply:
 - a. The record must be posted or displayed in the manner specified in the other law.
 - b. Except as otherwise provided in subdivision b of subsection 4, the record must be sent, communicated, or transmitted by the method specified in the other law.
 - c. The record must contain the information formatted in the manner specified in the other law.
3. If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.
4. The requirements of this section may not be varied by agreement, but:
 - a. To the extent a law other than this Act requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection 1 that the information be in the form of an electronic record capable of retention may also be varied by agreement; and
 - b. A requirement under a law other than this Act to send, communicate, or transmit a record by United States mail first-class postage prepaid may be varied by agreement to the extent permitted by the other law.

SECTION 8. Attribution and effect of electronic record and electronic signature.

1. An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.
2. The effect of an electronic record or electronic signature attributed to a person under subsection 1 is determined from the context and surrounding circumstances at the time of the record's or signature's creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

SECTION 9. Effect of change or error. If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

1. If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.
2. In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:
 - a. Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;
 - b. Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and
 - c. Has not used or received any benefit or value from the consideration, if any, received from the other person.
3. If neither subsection 1 nor subsection 2 applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.
4. Subsections 2 and 3 may not be varied by agreement.

SECTION 10. Notarization and acknowledgment. If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

SECTION 11. Retention of electronic records - Originals.

1. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:
 - a. Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and
 - b. Remains accessible for later reference.
2. A requirement to retain a record in accordance with subsection 1 does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.
3. A person may satisfy subsection 1 by using the services of another person if the requirements of that subsection are satisfied.

4. If a law requires a record to be presented or retained in the record's original form, or provides consequences if the record is not presented or retained in the record's original form, that law is satisfied by an electronic record retained in accordance with subsection 1.
5. If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection 1.
6. A record retained as an electronic record in accordance with subsection 1 satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after July 31, 2001, specifically prohibits the use of an electronic record for the specified purpose.
7. This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

SECTION 12. Admissibility in evidence. In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

SECTION 13. Automated transactions. In an automated transaction, the following rules apply:

1. A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.
2. A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.
3. The terms of the contract are determined by the substantive law applicable to the contract.

SECTION 14. Time and place of sending and receipt.

1. Unless otherwise agreed between the sender and the recipient, an electronic record is sent when the record:
 - a. Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;
 - b. Is in a form capable of being processed by that system; and
 - c. Enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system

designated or used by the recipient which is under the control of the recipient.

2. Unless otherwise agreed between a sender and the recipient, an electronic record is received when:
 - a. The record enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and
 - b. The record is in a form capable of being processed by that system.
3. Subsection 2 applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection 4.
4. Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection:
 - a. If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.
 - b. If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.
5. An electronic record is received under subsection 2 even if no individual is aware of the record's receipt.
6. Receipt of an electronic acknowledgment from an information processing system described in subsection 2 establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.
7. If a person is aware that an electronic record purportedly sent under subsection 1, or purportedly received under subsection 2, was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, this subsection may not be varied by agreement.

SECTION 15. Transferable records.

1. In this section, "transferable record" means an electronic record that:
 - a. Would be a note under chapter 41-03 or a document under chapter 41-07 if the electronic record were in writing; and
 - b. The issuer of the electronic record expressly has agreed is a transferable record.
2. A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably

- establishes that person as the person to which the transferable record was issued or transferred.
3. A system satisfies subsection 2, and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:
 - a. A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in subdivisions d, e, and f, unalterable;
 - b. The authoritative copy identifies the person asserting control as:
 - (1) The person to which the transferable record was issued; or
 - (2) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;
 - c. The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;
 - d. Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;
 - e. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
 - f. Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.
 4. Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 41-01-11, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under title 41 including, if the applicable statutory requirements under subsection 1 of section 41-03-28, section 41-07-30, or section 41-09-29 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.
 5. Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under title 41.
 6. If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

SECTION 16. Creation and retention of electronic records and conversion of written records by governmental agencies. The state records administrator shall provide guidelines to determine whether, and the extent to which, a governmental agency will create and retain electronic records and convert written records to electronic records.

SECTION 17. Acceptance and distribution of electronic records by governmental agencies.

1. Except as otherwise provided in subsection 6 of section 11 of this Act, the state records administrator shall provide guidelines to determine whether, and the extent to which, a governmental agency will send and accept electronic records and electronic signatures to and from other persons.
2. To the extent that a governmental agency uses electronic records and electronic signatures under subsection 1, the state records administrator, giving due consideration to security, may specify:
 - a. The manner in which the electronic records must be sent, communicated, received, and stored and the systems established for those purposes;
 - b. If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;
 - c. Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and
 - d. Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.
3. Except as otherwise provided in subsection 6 of section 11 of this Act, this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

SECTION 18. Interoperability. The state records administrator shall encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

Approved April 3, 2001
Filed April 3, 2001

CORPORATIONS

CHAPTER 109

SENATE BILL NO. 2090

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

SECURITIES LAW REVISIONS

AN ACT to create and enact a new subsection to section 10-04-06 of the North Dakota Century Code, relating to exempt securities transactions; to amend and reenact section 10-04-04, subsections 5 and 8, paragraph 6 of subdivision b of subsection 9, and paragraph 3 of subdivision a of subsection 16 of section 10-04-06, subsection 1 of section 10-04-08.4, sections 10-04-10 and 10-04-10.1, subsection 1 of section 10-04-14, section 10-04-15, subsection 1 of section 10-04-16, and sections 10-04-16.1 and 10-04-18 of the North Dakota Century Code, relating to registration of securities, exempt transactions, federal covered securities, registration of dealers, agents, investment advisers, and investment adviser representatives, investment advisory activity, consent to service of process, fraudulent practices, the authority of the securities commissioner to conduct investigations and to issue orders, and statutes of limitation; to direct the securities commissioner to review policies and procedures regarding financing for North Dakota companies and to report to the legislative council; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-04-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-04-04. Registration of securities. It is unlawful for any person to sell, or offer for sale, any security in this state unless it is registered under this chapter or the security or transaction is exempt under section 10-04-05 or 10-04-06 or it is a federal covered security.

SECTION 2. AMENDMENT. Subsection 5 of section 10-04-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, whether the purchaser is acting for itself or in a fiduciary capacity.

SECTION 3. AMENDMENT. Subsection 8 of section 10-04-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 ~~the standards~~ Standard and poor's standard corporation descriptions ~~Poor's,~~ Moody's Mergent's industrial manual, Moody's Mergent's bank and finance manual, Moody's Mergent's transportation manual, Moody's Mergent's public utility manual, or Fitch's individual stock bulletin.
 - ~~d.~~ e. Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States.
 - ~~e.~~ 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.

SECTION 4. AMENDMENT. Paragraph 6 of subdivision b of subsection 9 of section 10-04-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (6) The gross proceeds of the offering may not exceed ~~one~~ five million dollars.

SECTION 5. AMENDMENT. Paragraph 3 of subdivision a of subsection 16 of section 10-04-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (3) The issuer intends to register securities in this state or receive approval for an exemption under subsection 9 ~~and conduct its offering pursuant to either regulation A or rule 504, as promulgated by the securities and exchange commission.~~

SECTION 6. A new subsection to section 10-04-06 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

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 7. AMENDMENT. Subsection 1 of section 10-04-08.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any federal covered security that is subject to section 18(b)(2) of the Securities Act of 1933, as amended, may be offered and sold upon the filing of:
 - a. A copy of the issuer's registration statement or a notice of intent in writing or electronically for an indefinite or definite dollar amount for each security or class of security on a form prescribed by the commissioner ~~with a consent to service of process.~~
 - b. ~~If the notice filing is~~ A unit investment trust may file an initial notice filing for a definite dollar amount; ~~at or an indefinite dollar amount.~~ At the time of the initial notice filing for a definite dollar amount, the issuer shall pay a nonrefundable filing fee of one-tenth of one percent of the first seven hundred fifty thousand dollars and 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. In no event, however, may such filing fee be less than one hundred twenty-five dollars for each security or class of security.
 - c. ~~If the notice filing is for an indefinite dollar amount, at the time of the~~ An investment company or unit investment trust may file an initial notice filing ~~the issuer shall~~ for an indefinite dollar amount and pay a nonrefundable filing fee of ~~five~~ four hundred dollars for each security or class of security.
 - d. A notice filing for a definite dollar amount may be increased before the expiration of ~~one year from the date of~~ on the certificate of effectiveness at the same reduced fee, which must be calculated as provided in subdivision b as a separate fee for each additional amount.
 - e. A notice filing for a definite dollar amount may be renewed for additional periods of one year by filing, at least fifteen days prior to its expiration, a renewal and sales report notice with a fee of one hundred dollars to renew the unsold balance.
 - f. A notice filing for an indefinite dollar amount may be renewed by filing, within sixty days following the issuer's fiscal year, a renewal and sales report notice with a fee of ~~one-twentieth of one percent of the amount of securities sold in this state during the period of the notice filing being renewed~~ one hundred twenty-five dollars. ~~In no case may such fee be less than one hundred dollars nor more than two hundred fifty dollars.~~

- g. A notice filing may be terminated by the issuer upon providing the commissioner a notice of such termination.
- h. The provision for each security or class of security in this subsection is effective when the federal registration statement becomes effective with the securities and exchange commission or the date the notice of intent is received by the commissioner, whichever is later. A filing notice for a definite dollar amount is effective for a period of ~~one year~~ eighteen months from the date of effectiveness.
- i. A copy of any document filed with the securities and exchange commission as the commissioner may require.

SECTION 8. AMENDMENT. Section 10-04-10 of the 1999 Supplement to 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 the office of the commissioner, and must contain ~~the following~~ information: the commissioner determines to be necessary concerning the applicant.
 - a. ~~The name of the applicant.~~
 - b. ~~The address of the principal place of business of the applicant and the addresses of all branch offices, if any, of the applicant in this state.~~
 - c. ~~The form of business organization and the date of organization of the applicant.~~
 - d. ~~The names and business addresses of all members, partners, officers, directors, trustees, or managers of the applicant; a statement of the limitations, if any, of the liability of any partner, member, manager, or trustee; and a statement setting forth in chronological order the occupational activities of each such partner, member, officer, director, trustee, or manager during the preceding ten years.~~
 - e. ~~A brief description of the general character of the business conducted or proposed to be conducted by the applicant.~~
 - f. ~~A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer has ever been refused, canceled, suspended, or withdrawn in any state, full details with respect thereto.~~

- g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any act in amendment thereof and whether any such registration of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.
- h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers, or employees is a member, and whether any such membership has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant as the commissioner may require. A dealer that is registered under the Securities Exchange Act of 1934 may satisfy this requirement by filing with the commissioner the dealer's most recent financial statements prepared under such Act.
- k. Whether the applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor other than minor highway traffic offenses and, if so, all pertinent information with respect to any such conviction.
- l. Any other information which the commissioner may by rule or order require.

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, and payment of the prescribed registration fee, which must be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a dealer unless the commissioner finds that the applicant is not of good business

reputation, or is not solvent, or ~~does~~ the applicant's designees do not appear qualified by training, examination or experience to act as 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 the office of the commissioner and must contain ~~the following~~ the following information: the commissioner determines to be necessary concerning the applicant.
 - a. ~~Name and residence and business address of the applicant.~~
 - b. ~~Name of the dealer or issuer employing or proposing to employ the applicant, unless the applicant is to be self-employed.~~
 - c. ~~Applicant's date of birth.~~
 - d. ~~All full and part-time work, self-employment, military service, unemployment and full-time education for the period of ten years immediately preceding the date of application. For all employment, include the nature of the employment and the names and addresses of employers of the applicant.~~
 - e. ~~A list of the states or other jurisdictions with which the applicant is registered as a dealer or agent of securities, and, if any such registration has ever been refused, canceled, limited, suspended, or revoked, full details with respect thereto.~~
 - f. ~~Whether the applicant has ever been convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court to a felony or misdemeanor and all pertinent information with respect to any such conviction or plea.~~

The commissioner shall require as a condition of registration that the applicant, and, in the case of a corporation, limited liability company, or partnership, all officers, directors, managers, governors, or partners doing securities business in this state, 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 ~~shall~~ 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. ~~There must be filed with such application payment of the prescribed registration fee, which must be returned if registration is refused.~~

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as 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 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 the office of the commissioner, and must contain the following information: the commissioner determines to be necessary concerning the applicant.
- (1) ~~Name, residence, and business address of the applicant.~~
 - (2) ~~If the applicant is a corporation, limited liability company, or association, give full information as to officers, partners, managers, and managing officers.~~
 - (3) ~~Information concerning the educational and business background and disciplinary history of all officers, directors, partners, control persons, and owners of five percent or more of the investment adviser.~~
 - (4) ~~The plan and character of business, and the proposed method of operation.~~
 - (5) ~~Such other information as may be required.~~
- e. ~~If the applicant is a foreign corporation, limited liability company, or association, it shall file with its application:~~
- (1) ~~A copy of its articles.~~
 - (2) ~~Certificate showing authorization to transact business.~~
- d. 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.
- e. ~~There must be filed with such application:~~
- (1) ~~A written consent to the service of process upon the commissioner in actions against the investment adviser conforming to the requirements of section 10-04-14.~~
 - (2) ~~Payment of the prescribed registration fee, which must be returned if registration is refused.~~

- ~~(3)~~ A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant or by a responsible officer or member of the applicant, as the commissioner may require. An investment adviser that maintains its principal place of business in a state other than this state and that is registered with and in compliance with such state's financial reporting requirements may satisfy this requirement by filing with the commissioner a copy of those financial statements, if any, that are filed by the investment adviser with the state in which it maintains its principal place of business.
- f. 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.
- g. 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.
- h. 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.
- i. A registrant as investment adviser shall notify the commissioner 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, 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 May first December thirty-first. It may be renewed by filing with the commissioner, 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 is or becomes inaccurate or incomplete in any material respect, the federal covered adviser shall file an amendment with the commissioner 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.

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 the office of the commissioner, and contain ~~the following information: the commissioner determines to be necessary concerning the applicant.~~
 - a. ~~Name, residence, and business address of the applicant.~~
 - b. ~~Name of the investment adviser employing or proposing to employ the applicant, unless the applicant is to be self-employed.~~
 - c. ~~Applicant's date of birth.~~
 - d. ~~All full-time and part-time work, self-employment, military service, unemployment and full-time education for the period of ten years immediately preceding the date of application. For all employment, include the nature of the employment and the names and addresses of employers of the applicant.~~
 - e. ~~A list of the states or other jurisdictions with which the applicant is registered as an investment adviser representative, and, if any registration has ever been refused, canceled, limited, suspended, or revoked, full details with respect thereto.~~
 - f. ~~Whether the applicant has ever been convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court to a felony or misdemeanor and all pertinent information with respect to any such conviction or plea.~~

~~There must be filed with the application payment of the prescribed registration fee, which must be returned if registration is refused.~~

When an applicant has fully complied with the provisions of this subsection, the commissioner may register 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 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 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.

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 ~~rule~~ 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. Section 10-04-10.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-04-10.1. Advisory activities.

1. It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
 - a. To employ any device, scheme, or artifice to defraud the other person; or
 - b. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.
2. It is unlawful for any person, in the solicitation of a client for investment advisory services, to make any false or misleading statement of material fact, or to fail to disclose a material fact.
3. It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to knowingly sell any security to or purchase any security from a client while acting for the person's own account or as a broker for another client unless the person first makes a written disclosure to the client of the capacity in which the person is acting and obtains the client's written consent to the transaction.
4. It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to engage in dishonest or unethical practices as the commissioner may define by rule.
5. It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:
 - a. The investment adviser shall not be compensated on the basis of a share of capital gains, earnings, or capital appreciation of the funds or any portion of the funds of the client. This does not prohibit an investment advisory contract that provides for compensation based

on the total value of a fund determined as of a definite date or averaged as of definite dates or over a definite period.

- b. An assignment of the investment advisory contract may not be made by the investment adviser unless the investment adviser notifies the client of the intended assignment and obtains the prior written consent of the client.
 - c. The investment adviser shall provide written notice to the client within fifteen days of any change of ownership in excess of five percent.
 - d. The investment adviser shall provide written notice to the client within fifteen days of a change of controlling interest of the investment adviser. The client may terminate the investment advisory contract without penalty by providing a written notice to the investment adviser within thirty days after the client's receipt of the notice of change of controlling interest.
6. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:
- a. ~~The commissioner by rule prohibits custody; or~~
 - b. ~~The investment adviser fails to notify the commissioner that unless the investment adviser has or may have custody acts as a fiduciary pursuant to duties as an executor, guardian, conservator, receiver, or trustee.~~
7. ~~No action may be brought under this section by the commissioner after six years from the date of the alleged violation.~~

SECTION 10. AMENDMENT. Subsection 1 of section 10-04-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 ~~this chapter~~ subsection 2 of section 10-04-08.4 shall file with the commissioner, 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 the office of the commissioner, 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 address on file with the commissioner, 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.

SECTION 11. AMENDMENT. Section 10-04-15 of the North Dakota Century Code is amended and reenacted as follows:

10-04-15. Fraudulent practices. It shall be a fraudulent practice and it shall be unlawful:

1. For any person knowingly to subscribe to, or make or cause to be made, any material false statement or representation in any application, financial statement, or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact in any such document or statement which is necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.
2. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to employ any device, scheme, or artifice to defraud.
3. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.
4. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to engage in any act, practice, or course of business which operates or would operate as a fraud or deception upon purchasers or the public.
5. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to effect 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 of the security.
6. ~~No action may be brought under this section by the commissioner after six years from the date of the alleged violation.~~

SECTION 12. AMENDMENT. Subsection 1 of section 10-04-16 of the North Dakota Century Code is amended and reenacted as follows:

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 ten days after receipt of the order. 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.

⁵⁰ **SECTION 13. AMENDMENT.** Section 10-04-16.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-04-16.1. Investigations and subpoenas.

1. The commissioner may:
 - a. Make such public or private investigations within or outside of this state as the commissioner deems 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. ~~Any investigation under this section may include an investigatory hearing held in accordance with section 28-32-08.~~ 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.

⁵⁰ Section 10-04-16.1 was also amended by section 4 of House Bill No. 1030, chapter 293.

2. For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.
3. The commissioner may issue subpoenas in this state at the request of a securities agency or administrator of another state if the activities constituting an alleged violation for which information is sought would be a violation of this chapter if the activities had occurred in this state.
4. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, 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.~~ 5. No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground 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. No testimony or evidence, documentary or otherwise, compelled from an individual after a valid claim of the privilege against self-incrimination has been made may be used against the individual in any criminal proceeding, or in any proceeding to subject the individual to a penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

SECTION 14. AMENDMENT. Section 10-04-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-04-18. Penalties.

1. Any person who willfully violates any provision of this chapter, except 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.
2. As used in this section, the term "willfully", except as it applies to subdivisions a and b of subsection 1 of section 10-04-10.1 and subsections 2 and 4 of section 10-04-15, means that the person acted intentionally in the sense that the person was aware of what the person was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required.

3. Each violative act or omission constitutes a separate offense, and a prosecution or conviction for any one offense shall not bar a prosecution or conviction for any other offense.
4. An information must be filed or an indictment must be found under this chapter within five years after the alleged violation.
5. No action may be brought under this chapter by the commissioner after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under sections 10-04-09, ~~10-04-10.1~~, and 10-04-11, and ~~10-04-15~~.

SECTION 15. SECURITIES COMMISSIONER REVIEW OF POLICIES AND PROCEDURES. During the 2001-02 interim, the securities commissioner shall conduct a review of policies and procedures relating to access to capital for North Dakota companies, with the goal of increasing North Dakota companies' access to capital investment. Before August 1, 2002, the securities commissioner shall report the commissioner's findings and any recommendations to the legislative council.

SECTION 16. EMERGENCY. Sections 6 and 8 of this Act are declared to be an emergency measure.

Approved April 17, 2001
Filed April 17, 2001

CHAPTER 110

SENATE BILL NO. 2185

(Senators Tomac, Stenehjem, Wardner)
(Representatives Drovdal, Nelson, Schmidt)

PAYMENTS IN LIEU OF TAXES BY NONPROFIT ORGANIZATIONS

AN ACT to amend and reenact section 10-06.1-10 of the North Dakota Century Code, relating to payments in lieu of taxes on farmland or ranchland acquired by nonprofit organizations for conservation purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵¹ **SECTION 1. AMENDMENT.** Section 10-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-10. Acquisition of certain farmland or ranchland by certain nonprofit organizations. A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985, or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization created or authorized under Public Law No. 99-294 [100 Stat. 418] may acquire no more than twelve thousand acres [4856.228 hectares] of land from interest derived from state, federal, and private sources held in its trust fund.
2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:
 - a. The land must be maintained and managed for the purpose of conserving natural area and habitat for biota.
 - b. Any agricultural use of the land is in accordance with the management of the land for conservation and agricultural use, and is by a sole proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.
 - c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.

⁵¹ Section 10-06.1-10 was also amended by section 1 of House Bill No. 1053, chapter 111.

- d. The nonprofit organization must fully comply with all state laws relating to the control of noxious and other weeds and insects.
 - e. The nonprofit organization must make payments in lieu of property taxes on the property, calculated in the same manner as if the property was subject to full assessment and levy of property taxes.
3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and recreation department, the state engineer, the commissioner of agriculture, the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, and the manager of the Garrison Diversion Conservancy District for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.
 4. Land acquired in accordance with this section may not be conveyed to the United States or any agency or instrumentality of the United States.
 5. On failure to qualify to continue ownership under subsection 2, the land must be disposed of within five years of that failure to qualify.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 111

HOUSE BILL NO. 1053 (Representative Boucher)

PROPERTY ACQUISITION BY NONPROFIT ORGANIZATIONS

AN ACT to amend and reenact subsection 3 of section 10-06.1-10 of the North Dakota Century Code, relating to acquisition of farmland or ranchland by nonprofit organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵² **SECTION 1. AMENDMENT.** Subsection 3 of section 10-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

3. Before ~~any~~ farmland or ranchland may be purchased by ~~any~~ a nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and recreation department, ~~the state engineer, the commissioner of agriculture commissioner,~~ the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, and the ~~manager of the Garrison Diversion Conservancy District for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees~~ chairman of the county commission of any county affected by the acquisition. The advisory committee shall hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

Approved March 14, 2001
Filed March 15, 2001

⁵² Section 10-06.1-10 was also amended by section 1 of Senate Bill No. 2185, chapter 110.

CHAPTER 112

SENATE BILL NO. 2142

(Industry, Business and Labor Committee)
(At the request of the Secretary of State)

CORPORATION AND LLC LAW REVISIONS

AN ACT to amend and reenact subsections 10 and 11 of section 10-19.1-01, subsection 6 of section 10-19.1-10, subsection 2 of section 10-19.1-19, subsections 1 and 3 of section 10-19.1-31, subsection 2 of section 10-19.1-51, subsection 4 of section 10-19.1-61.1, subsection 3 of section 10-19.1-64, subsections 1 and 2 of section 10-19.1-83, subsections 1 and 3 of section 10-19.1-87, subsection 7 of section 10-19.1-91, subsections 1 and 3 of section 10-19.1-98, section 10-19.1-100, subsection 2 of section 10-31-13, subsection 8 of section 10-31-13.1, subsections 9, 15, and 29 of section 10-32-02, subsection 2 of section 10-32-07, subsection 1 of section 10-32-23, subsection 4 of section 10-32-30, subsection 7 of section 10-32-32, subsection 2 of section 10-32-35, subsection 2 of section 10-32-42, subsection 1 of section 10-32-43, sections 10-32-44 and 10-32-50, subsection 1 of section 10-32-54, subsection 1 of section 10-32-59, section 10-32-62, subsection 1 of section 10-32-68, subsection 1 of section 10-32-69, section 10-32-70, subsection 1 of section 10-32-76, subsection 3 of section 10-32-78, subsection 4 of section 10-32-80, section 10-32-82, subsection 5 of section 10-32-86, subsection 2 of section 10-32-87, subsection 1 of section 10-32-89, subsection 7 of section 10-32-99, subsections 1, 2, and 3 of section 10-32-102, sections 10-32-104 and 10-32-109, subsections 2 and 3 of section 10-32-119, subsection 1 of section 10-32-131, and subdivision t of subsection 1 of section 10-32-150 of the North Dakota Century Code, relating to business corporations, professional corporations, and limited liability companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 10 and 11 of section 10-19.1-01 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

10. "Constituent corporation" means a ~~domestic or~~ foreign corporation or a foreign corporation that is a ~~party to a merger or an exchange~~;
 - 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.
11. "Constituent organization" means a corporation, foreign corporation, ~~or a domestic~~ limited liability company, or foreign limited liability company that is a ~~party to a merger or an exchange~~;
 - 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.

SECTION 2. AMENDMENT. Subsection 6 of section 10-19.1-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. The articles may contain other provisions not inconsistent with section 10-19.1-32 or any other provision of law relating to the management of the business or the regulation of the affairs of the corporation.

SECTION 3. AMENDMENT. Subsection 2 of section 10-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

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. ~~The provisions of this subsection regarding shareholder proposed amendments do not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder govern.~~

SECTION 4. AMENDMENT. Subsections 1 and 3 of section 10-19.1-31 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or the regulation of the affairs of the corporation not inconsistent with section 10-19.1-32 or any other provision of law or the articles.
3. Unless the articles or bylaws provide otherwise, a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote may propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.
 - a. The resolution must set forth the provisions proposed for adoption, amendment, or repeal.

- b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2, 3, and 4 of section 10-19.1-19, for amendment of the articles.
- c. ~~The provisions of this subsection regarding shareholder proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules in which case the federal securities laws or rules shall govern.~~
- d. The articles or bylaws may impose different or additional requirements for the shareholders to adopt, amend, or repeal the bylaws.

SECTION 5. AMENDMENT. Subsection 2 of section 10-19.1-51 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 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 was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;
 - b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the shareholders holders of all outstanding shares, whether or not entitled to vote, and the contract or transaction is approved in good faith by:
 - (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors; or
 - (2) The unanimous affirmative vote of the holder of all outstanding shares, whether or not entitled to vote;
 - c. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or
 - d. The contract or transaction is a distribution described in subsection 1 of section 10-19.1-92 or a merger or exchange described in subsection 1 or 2 of section 10-19.1-96.

SECTION 6. AMENDMENT. Subsection 4 of section 10-19.1-61.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 4. Subject to the restrictions provided in subsections 2 and 3 or any restrictions in the articles that states that this subsection does not apply,

a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 10-19.1-19 and 10-19.1-20. In effecting a division or combination under this subsection, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.

SECTION 7. AMENDMENT. Subsection 3 of section 10-19.1-64 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A corporation may issue rights to purchase after the terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board or by an officer pursuant to board authorization, subject to any restrictions in the articles.

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 10-19.1-83 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A written agreement ~~solely~~ among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subsections 2 and 3. The agreement may also include as parties persons who are neither shareholders or subscribers.
2. A written agreement ~~among persons~~ as described in subsection 1 which relates to the control of or the liquidation and dissolution of the corporation, the relations among ~~them~~ the shareholders and subscribers, or any phase of the business and affairs of the corporation, including the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders and others by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who, on the date the agreement first became effective, are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued. A written agreement as described in subsection 1 may provide for its amendment through nonunanimous means.

SECTION 9. AMENDMENT. Subsections 1 and 3 of section 10-19.1-87 of the 1999 Supplement to the North Dakota Century Code are 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, except as provided in subsection 3;
 - d. A plan of exchange, whether under this chapter or under chapter 10-32, to which the corporation is a ~~party~~ constituent organization as the corporation whose shares will be acquired by the acquiring corporation, ~~if the shares of the shareholder are entitled to vote on the plan~~ 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.
3. Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the shareholders of ~~the~~:
- a. The surviving corporation in a merger if the shares of the shareholder are not entitled to be voted on the merger with respect to shares of the shareholders that are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or
 - b. The corporation whose shares will be acquired by the acquiring corporation in a plan of exchange with respect to shares of the

shareholders that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.

SECTION 10. AMENDMENT. Subsection 7 of section 10-19.1-91 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. All determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:
 - a. By the board by a majority of a quorum, if the directors 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, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;
 - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;
 - d. If a determination is not made under subdivisions a, b, and c, by ~~the shareholders~~ affirmative vote of the shareholders required by section 10-19.1-74, other than the shareholders 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:
 - (1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or
 - (2) A request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

SECTION 11. AMENDMENT. Subsections 1 and 3 of section 10-19.1-98 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A resolution containing the plan of merger or exchange must be approved by the governing board as required by section 10-19.1-46 or 10-32-83 of each constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization, in the case of a plan of merger or the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of a plan of exchange. The plan of merger or exchange may require that it be submitted to the shareholders whether or not the board determines at any time after the board's initial approval of the plan that the plan is no longer advisable and recommends that the shareholders reject it. If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange under this subsection, written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 10-32-40 in the case of a limited liability company. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.

3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series solely because the plan of merger or exchange affects a cancellation or exchange of ownership interests of the class or series if the plan of merger or exchange affects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are outstanding immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87 or 10-32-54 in the event of the merger or exchange.

SECTION 12. AMENDMENT. Section 10-19.1-100 of the 1999 Supplement to 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 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, without a vote of the owners of the parent or any subsidiary; or 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.
4. 5. A copy of the plan of merger must be mailed to each owner, other than the parent and any subsidiary, of each subsidiary that is a constituent organization in the merger.
- ~~5.~~ 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 and the number of ownership interests of each class and series owned by the parent directly, or indirectly through related constituent organizations;

- 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.
- ~~6.~~ 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 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.
- ~~7.~~ 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.
- ~~8.~~ 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.
- ~~9.~~ 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 13. AMENDMENT. Subsection 2 of section 10-31-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 2. With respect to a professional organization in the form of a limited liability company:
 - a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified

for the filing of the report by chapter 10-32 giving the name and residence address of all managers, governors, and members of the organization ~~as of the thirtieth day of June next preceding~~ at the time of filing of the annual report.

- b. The report must include a statement that all governors and members holding voting membership interests who practice in this state are licensed to render the same specific professional services as those for which the limited liability company was organized. This report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president of the limited liability company; and
 - (3) Accompanied by the filing fee prescribed in section 10-32-180.
- c. A copy of the report must be filed at the same time with the regulatory board that licenses the members described in the report. No filing fee may be charged by the regulatory board.
- d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulatory board.

SECTION 14. AMENDMENT. Subsection 8 of section 10-31-13.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. a. The provisions of chapter 45-22 applicable to foreign limited liability partnerships apply to a foreign professional organization rendering professional services in this state in the form of a foreign limited liability partnership. Such a foreign professional organization enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other foreign limited liability partnerships doing business in this state, except where inconsistent with the letter and purpose of the provisions of this chapter applicable to foreign professional organizations.
- b. A foreign professional organization rendering professional services in this state in the form of a foreign limited liability partnership shall include in its registration ~~or renewal registration~~ under section 45-22-03 the following information:
 - (1) The profession to be practiced by the foreign limited liability partnership;
 - (2) The names and residence addresses of all partners of the limited liability partnership who practice the profession in this state; and

- (3) In a registration, a certificate from the regulating board of the profession involved that all partners who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability partnership was formed; ~~and in a renewal registration, a statement that all partners who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability partnership was formed.~~

SECTION 15. AMENDMENT. Subsections 9, 15, and 29 of section 10-32-02 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

9. "Constituent organization" means a limited liability company or a domestic or foreign corporation that ~~is a party to a merger or an exchange;~~
- 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.
15. "Domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by chapter 10-19.1.
29. "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.

SECTION 16. AMENDMENT. Subsection 2 of section 10-32-07 of the 1999 Supplement to the North Dakota Century Code is 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. ~~Unanimous~~ 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.

SECTION 17. AMENDMENT. Subsection 1 of section 10-32-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 1. A limited liability company has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles of organization. The articles may not limit the powers stated in subsection 3. A member-control agreement may limit the powers stated in subsections 4 through 24.

SECTION 18. AMENDMENT. Subsection 4 of section 10-32-30 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 4. If for any reason the continued membership of a member is terminated ~~and~~, then subject to the articles of organization and any member-control agreement:
 - a. If the termination does not result in the dissolution of the limited liability company, ~~subject to the articles of organization and any member-control agreement~~, the member whose membership has terminated loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; or
 - b. If the termination does result in the dissolution of the limited liability company, ~~subject to the articles of organization and any member-control agreement~~, the member whose continued membership has terminated retains all governance rights and financial rights owned before the termination of the membership and may exercise those rights through the winding up and termination of the limited liability company.

SECTION 19. AMENDMENT. Subsection 7 of section 10-32-32 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Subject to subsection 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by ~~this~~ subsection 2. However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by ~~this~~ subsection 2. If a secured party has a security interest in a member's financial rights and governance rights, including a security interest in a complete membership interest, this subsection's requirement that the secured party obtain ~~consent~~ the consents required by subsection 2 applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.

SECTION 20. AMENDMENT. Subsection 2 of section 10-32-35 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If an event referred to in subsection 1 causes the termination of a member's membership interest and the termination does not result in dissolution, then subject to the articles of organization and any member-control agreement:
 - a. As provided in subsection 3 of section 10-32-30, the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and
 - b. The rights to be exercised by the legal representative of the terminated member will be limited accordingly.

SECTION 21. AMENDMENT. Subsection 2 of section 10-32-42 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, a member-control agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests as is required pursuant to subsection 1, unless the articles of organization or a member-control agreement requires a larger proportion. Unless otherwise stated in the articles, a member-control agreement or the bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 10-32-44.

SECTION 22. AMENDMENT. Subsection 1 of section 10-32-43 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed by all of the members entitled to vote on that action. If provided by the articles or a member-control agreement ~~so provides~~, any action may be taken by written action signed 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.

SECTION 23. AMENDMENT. Section 10-32-44 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-44. Quorum of members.

1. A quorum for a meeting of members is the owners of a majority of the voting power of the membership interests entitled to vote at the meeting, unless a different proportion is provided in the articles of organization, a member-control agreement, or the bylaws.
2. Except as provided in subdivision b, a quorum is necessary for the transaction of business at a meeting of members.
 - a. If a quorum is not present, a meeting may be adjourned from time to time for that reason.
 - b. If a quorum has been present at a meeting and members have withdrawn from the meeting so that less than a quorum remains, the members still present may continue to transact business until adjournment.

SECTION 24. AMENDMENT. Section 10-32-50 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-50. Member-control agreements.

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.
2. With respect to the validity of a member-control agreement:
 - a. A member-control agreement described in subsection 1 is valid if the agreement is in writing and is signed by the persons who, on the date the agreement first becomes effective, comprise:
 - (1) All members of the limited liability company, regardless of voting power; and
 - (2) All persons who are parties to contribution agreements that on that date have not yet been fully performed, regardless of whether those parties will, when members, have voting power.
 - b. A member-control agreement may also include as parties persons who are neither members nor parties to a contribution agreement.
 - c. A member-control agreement may provide for amendment of the member-control agreement through nonunanimous means.
 3. A member-control agreement valid under subsections 1 and 2 is enforceable by and against persons who are parties to the member-control agreement and is also binding upon and enforceable against persons who acquire an interest in a membership interest or in a contribution agreement having knowledge of the existence of the member-control agreement.
 - a. A signed original of the member-control agreement must be filed with the limited liability company.
 - ~~a.~~ b. The limited liability company shall note in the limited liability company's required records that the members' interests are

governed by a member-control agreement entered into under this section.

- ~~b.~~ c. A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.
- 4. A member-control agreement valid under subsections 1 and 2 is specifically enforceable.
- 5. ~~A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.~~
- ~~6.~~ If a member-control agreement authorized under this section takes away from any person any of the authority and responsibility that the person would otherwise possess under this chapter, the effect of the member-control agreement is also to relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that authority and responsibility and to impose that liability on the person or persons possessing the authority and responsibility under the agreement.
- ~~7.~~ 6. This section does not apply to, limit, or restrict agreements otherwise valid, and the procedure set forth in this section is not the exclusive method of agreement among members or between the members and the limited liability company with respect to any of the matters described.

SECTION 25. AMENDMENT. Subsection 1 of section 10-32-54 of the 1999 Supplement to 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 ~~their~~ 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 ~~party~~ constituent organization;
 - d. A plan of exchange to which the limited liability company is a ~~party~~ 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 26. AMENDMENT. Subsection 1 of section 10-32-59 of the 1999 Supplement to 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 27. AMENDMENT. Section 10-32-62 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-62. Distribution in kind. Except as provided in the articles of organization or a member-control agreement, ~~a~~:

- 1. A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. ~~Except as provided in the articles of organization, a~~
- 2. A member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent the percentage of the

asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

SECTION 28. AMENDMENT. Subsection 1 of section 10-32-68 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may have bylaws, which may be known as an operating agreement. The bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with section 10-32-69 or any other provision of law or the articles of organization. An act of the board under subsection 2 and of the members under subsection 3 will be considered part of the bylaws only if the act expressly states that it is intended to constitute or revise the bylaws.

SECTION 29. AMENDMENT. Subsection 1 of section 10-32-69 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 30. AMENDMENT. Section 10-32-70 of the 1999 Supplement to 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 31. AMENDMENT. Subsection 1 of section 10-32-76 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Unless the articles of organization or a member-control agreement provides that there is no cumulative voting, each member entitled to vote for governors has the right to cumulate voting power in the election of governors by giving written notice of intent to cumulate voting power to any manager of the limited liability company before the meeting, or to the presiding manager at the meeting at which the election is to occur at any time before the election of governors at the meeting, in which case:
 - a. The presiding manager at the meeting shall announce, before the election of governors, that members shall cumulate their voting power; and
 - b. Each member shall cumulate that member's voting power either by casting for one candidate the amount of voting power equal to the number of governors to be elected multiplied by the voting power

represented by the membership interests owned by that member, or by distributing all of that voting power on the same principle among any number of candidates.

SECTION 32. AMENDMENT. Subsection 3 of section 10-32-78 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 ~~the proportion a~~ majority of the voting power of ~~the all~~ membership interests of ~~the classes or series the governor represents sufficient to elect them~~ 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. ~~Whenever the members of any class are entitled to elect one or more governors by the provisions of the articles of the organization, the provisions of this section apply, in respect to the removal of a governor or governors so elected, to the vote of the members of that class and not to the vote of the members as a whole.~~
 - 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 33. AMENDMENT. Subsection 4 of section 10-32-80 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 34. AMENDMENT. Section 10-32-82 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-82. Quorum of governors. A majority, or a larger or smaller proportion or number provided in the articles of organization, a member-control agreement, or the bylaws, of the governors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the governors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the governors present may continue to transact business until adjournment, even though the withdrawal of a number of governors originally present leaves less than the proportion or number otherwise required for a quorum.

SECTION 35. AMENDMENT. Subsection 5 of section 10-32-86 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles of organization or a member-control agreement. Neither the articles nor a member-control agreement may eliminate or limit the liability of a governor:
 - a. For any breach of the governor's duty of loyalty to the limited liability company or its members;
 - b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
 - c. Under section 10-32-66;
 - d. For any transaction from which the governor derived an improper personal benefit; or
 - e. For any act or omission occurring before the date when the provision in the articles of organization or a member-control agreement eliminating or limiting liability becomes effective.

SECTION 36. AMENDMENT. Subsection 2 of section 10-32-87 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 37. AMENDMENT. Subsection 1 of section 10-32-89 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 38. AMENDMENT. Subsection 7 of section 10-32-99 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 39. AMENDMENT. Subsections 1, 2, and 3 of section 10-32-102 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A resolution containing the plan of merger or exchange must be approved by the governing board as required by section 10-19.1-46 or 10-32-83 of each constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization in the case of a plan of merger; and the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of an exchange. The plan of merger or exchange may require that it be submitted to the owners whether or not the governing board determines at any time after the governing board's initial approval of the plan that the plan is no longer advisable and recommends that the owners reject it. If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange pursuant to this subsection, written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 10-32-40 for notice of meetings of members in the case of a limited liability company. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.
2. At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger is adopted when approved by the affirmative vote of the owners as required by section 10-19.1-74 or 10-32-42. Except as provided in subsection 3 or a member-control agreement, a class or series of ownership interests of the constituent organization is entitled to vote as a class or series if any provision of the plan would, if

contained in a proposed amendment to the articles of organization or a member-control agreement, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation or exchange of the ownership interests of the class or series if the plan of merger or exchange effects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are existing immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87 or 10-32-55, as the case may be, in the event of the merger or exchange.

SECTION 40. AMENDMENT. Section 10-32-104 of the 1999 Supplement to 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:
 - 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, 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.
4. 5. A copy of the plan of merger must be mailed to each owner, other than the parent, of each subsidiary that is a constituent organization to the merger.
- ~~5.~~ 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 and the number of ownership interests of each class and series owned by the parent directly or indirectly, through related constituent organizations;
 - 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
 - d. A statement that the plan of merger has been approved by the parent under this section.
- ~~6.~~ 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 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.
- ~~7.~~ 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.
- ~~8.~~ 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.

9. 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 41. AMENDMENT. Section 10-32-109 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-109. Methods of dissolution.

1. A limited liability company dissolves upon the occurrence of any of the following events:
 - a. When the period, if any, fixed in the articles of organization for the duration of the limited liability company expires;
 - b. By order of a court pursuant to sections 10-32-119 and 10-32-122;
 - c. By action of the organizers pursuant to section 10-32-110;
 - d. By action of the members pursuant to section 10-32-111;
 - e. For a limited liability company with articles of organization filed with the secretary of state:
 - (1) Before July 1, 1999, ~~except as provided in subsection 2 and~~ except as otherwise provided in the articles of organization or a member-control agreement, upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, ~~including but the~~ limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member:
 - (a) ~~Death of any~~ If there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of all the

remaining members obtained no later than ninety days after the termination of the continued membership; or

- (b) Retirement of any If the membership of the last or sole member;
 - (c) Resignation of any member;
 - (d) Redemption of a member's complete membership interest;
 - (e) Assignment of a member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;
 - (f) A buyout of a member's membership interest under section 10-32-119 which leaves that member with no governance rights;
 - (g) Expulsion of any member;
 - (h) Bankruptcy of any member;
 - (i) Dissolution of any member; or
 - (j) The occurrence of any other event that terminates the continued membership of a member in the limited liability company; or terminates and the legal representative of that last or sole member causes the limited liability company to admit at least one member.
- (2) After June 30, 1999, upon the occurrence of an event terminating the continued membership of a member in the limited liability company:
- (a) If the articles of organization or a member-control agreement specifically provide that the termination causes dissolution and in that event only as provided in the articles or member-control agreement; or
 - (b) If the membership of the last or sole member terminates and the legal representative of that last or sole member does not cause the limited liability company to admit at least one member within one hundred eighty days after the termination;
- f. A merger in which the limited liability company is not the surviving organization; or
- g. When terminated by the secretary of state pursuant to section 10-32-149.
2. For a limited liability company with articles of organization filed with the secretary of state before July 1, 1999, the limited liability company is not

dissolved and is not required to be wound up by reason of any event terminating the continued membership of a member:

- a. If there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of every remaining member obtained no later than ninety days after the termination of the continued membership, or under a separate right to continue stated in the articles of organization or a member-control agreement; or
 - b. If the membership of the last or sole member terminates and the legal representative of that last or sole member causes the limited liability company to admit at least one member within one hundred eighty days after the termination.
3. A limited liability company dissolved by one of the dissolution events specified in subsection 1 must be wound up and terminated under the following dissolution provisions:
- a. When a limited liability company is dissolved under subdivision a of subsection 1 by reason of the expiration of the limited liability company's limited period of duration, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131;
 - b. When a limited liability company is dissolved under subdivision b of subsection 1 by reason of a court order, the limited liability company must be wound up and terminated under sections 10-32-119 through 10-32-126;
 - c. When a limited liability company is dissolved under subdivision c of subsection 1 by its organizers, the limited liability company must be wound up and terminated under section 10-32-110 and sections 10-32-112 through 10-32-118;
 - d. When a limited liability company is dissolved under subdivision d of subsection 1 by its members, the limited liability company must be wound up and terminated under sections 10-32-111 through 10-32-118 and section 10-32-131; and
 - e. When a limited liability company is dissolved under subdivision e of subsection 1 by reason of a termination of the continued membership of a member, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131.
4. 3. Notwithstanding any provision of law, articles of organization, member-control agreement, bylaws, other agreement, resolution, or action to the contrary, a limited liability company is not dissolved and is not required to be wound up upon the granting of a security interest in a member's membership interest, governance rights, or financial rights, or upon the foreclosure or other enforcement of a security interest in a member's financial rights or upon the secured party's assignment, acceptance, or retention of a member's financial rights in accordance with title 41.

SECTION 42. AMENDMENT. Subsections 2 and 3 of section 10-32-119 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but may not refuse to order any particular form of relief solely on the grounds that the limited liability company has accumulated or current operating profits. In an action under subdivision b of subsection 1 in which one or more of the circumstances described in that subdivision is established, a court, upon motion of a limited liability company or a member, may order the sale by a plaintiff or a defendant of all membership interests of the limited liability company held by the plaintiff or defendant to the limited liability company or the moving members, whichever is specified in the motion, if the court determines in the court's discretion that an order is fair and equitable to all parties under all of the circumstances of the case.
 - a. The purchase price of any membership interest sold under this subsection is the fair value of the membership interest as of the date of the commencement of the action or as of another date found equitable by the court. If the articles of organization, a member-control agreement, or another agreement state a price for the redemption or buyout of membership interests, the court shall order the sale for the price and on the terms set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
 - b. Within five days after entry of the order, the limited liability company shall provide each selling member with the information the limited liability company is required to provide under subsection 6 of section 10-32-55.
 - c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the membership interests under the provisions of subsection 9 of section 10-32-55, may allow interest or costs as provided in subsections 1 and 10 of section 10-32-55, and may allocate payment among the member whose membership interest is being sold and any assignees of the financial rights of that member.
 - d. The purchase price must be paid in one or more installments as agreed on by the parties or, if no agreement can be reached within forty days of entry of the order, as ordered by the court upon entry of an order for the sale of a membership interest under this subsection and provided the limited liability company or the moving members post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that any full purchase price of the membership interest, plus the additional costs, expenses, and fees awarded by the court, will be paid when due and payable, the selling member no longer has any rights or status as a member, manager, or governor, except the right to receive the fair value of the membership interest plus other amounts as might be awarded.

3. In an action under subdivision b of subsection 4 in which one or more of the circumstances described in that subdivision is established, a court, upon motion of a limited liability company or a member, may order the sale by a plaintiff or a defendant of all membership interests of the limited liability company held by the plaintiff or defendant to the limited liability company or the moving members, whichever is specified in the motion, if the court determines in the court's discretion that an order is fair and equitable to all parties under all of the circumstances of the case:
 - a. The purchase price of any membership interest sold under this subsection is the fair value of the membership interest as of the date of the commencement of the action or as of another date found equitable by the court. If the articles of organization, a member-control agreement, or another agreement state a price for the redemption or buyout of membership interests, the court shall order the sale for the price and on the terms set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
 - b. Within five days after entry of the order, the limited liability company shall provide each selling member with the information the limited liability company is required to provide under subsection 6 of section 10-32-55.
 - c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the membership interests under the provisions of subsection 9 of section 10-32-55, may allow interest or costs as provided in subsections 4 and 10 of section 10-32-55, and may allocate payment among the member whose membership interest is being sold and any assignees of the financial rights of that member.
 - d. The purchase price must be paid in one or more installments as agreed on by the parties or, if no agreement can be reached within forty days of entry of the order, as ordered by the court upon entry of an order for the sale of a membership interest under this subsection and provided the limited liability company or the moving members post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that any full purchase price of the membership interest, plus the additional costs, expenses, and fees awarded by the court, will be paid when due and payable, the selling member no longer has any rights or status as a member, manager, or governor, except the right to receive the fair value of the membership interest plus other amounts as might be awarded. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but may not refuse to order any particular form of relief solely on the grounds that the limited liability company has accumulated or current operating profits.

SECTION 43. AMENDMENT. Subsection 1 of section 10-32-131 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to subsection 2, except when the dissolved limited liability company is being wound up and terminated under subsection 3 of section 10-32-112, the assets of the dissolved limited liability company must be disposed of to satisfy liabilities according to the following priorities:
 - a. To creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for interim distributions to members under section 10-32-61 or termination distributions under section 10-32-60;
 - b. Unless otherwise provided in the articles of organization or a member-control agreement, to members and former members of the limited liability company in satisfaction of liabilities for distributions under section 10-32-60 or 10-32-61; and
 - c. Unless otherwise provided in the articles of organization or a member-control agreement, to members first for a return of their contributions, as restated from time to time under section 10-32-57, and secondly respecting the member's membership interests in the proportions in which the members share in distributions.

SECTION 44. AMENDMENT. Subdivision t of subsection 1 of section 10-32-150 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- t. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, ~~twenty~~ fifty dollars.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 113

HOUSE BILL NO. 1042 (Legislative Council) (Commerce and Labor Committee)

VENTURE CAPITAL CORPORATION INCORPORATION

AN ACT to amend and reenact section 10-30.1-04 of the North Dakota Century Code, relating to venture capital corporation incorporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.1-04. Venture capital corporation - Incorporation.

1. To carry out the purposes of this chapter, a venture capital organization may be formed under chapter 10-19.1 if a corporation or under chapter 10-32 if a limited liability company. The articles of incorporation or articles of organization of a venture capital organization must comply with subsections 2 through 9.
2. The purpose of a venture capital corporation or limited liability company must be solely to raise funds to be used to make investments in, and provide financing to, qualified entities in a manner that will encourage capital investment in the state, encourage the establishment or expansion of business and industry, provide additional jobs within the state, and encourage research and development activities in the state.
3. Each director of a venture capital corporation or each governor of a venture capital limited liability company must be a North Dakota resident, and must have a minimum investment in the venture capital corporation or limited liability company of one thousand dollars.
4. A venture capital corporation or limited liability company shall provide financing to qualified entities to be used solely for the purpose of enhancing the production capacity of the qualified entity or the ability of the qualified entity to do business in this state. The venture capital corporation or limited liability company may establish and regulate terms and conditions, consistent with this chapter, with respect to the financing. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing, but no more than ~~twenty~~ twenty-five percent of the stated capital of a venture capital corporation or limited liability company may be invested in any one qualified entity. For purposes of this chapter, "one qualified entity" means a single entity or a group of affiliated entities that are engaged in a unitary business.
5. Business may not be transacted or indebtedness incurred by the venture capital corporation or limited liability company, except such as is incidental to the venture capital corporation's or limited liability company's organization or to obtaining subscriptions to or payment for

the venture capital corporation's or limited liability company's shares or membership interests, until the venture capital corporation or limited liability company receives consideration for such shares or membership interests equal to at least ~~five~~ two hundred fifty thousand dollars, which amount is the initial stated capital of the venture capital corporation or limited liability company.

6. All consideration received from the sale of shares or membership interests must be placed in an interest-bearing escrow account in the Bank of North Dakota, except up to ten percent of the proceeds may be withheld for use in activities incidental to the venture capital corporation's or limited liability company's organization or to obtaining subscriptions to or payment for the venture capital corporation's or limited liability company's shares or membership interests.
7. If at any time within one year of the issuance of the certificate of incorporation of the venture capital corporation or certificate of organization of the limited liability company, the venture capital corporation's or limited liability company's stated capital equals at least ~~five~~ two hundred fifty thousand dollars, or such greater amount established by the articles of incorporation, the articles of organization, or bylaws, the funds held in escrow pursuant to subsection 6 must be released to the venture capital corporation or limited liability company for use and disposition according to the venture capital corporation's or limited liability company's articles of incorporation, articles of organization, or the bylaws.
8. If within one year of the issuance of the certificate of incorporation of the venture capital corporation or the certificate of organization of the venture capital limited liability company, the venture capital corporation's or limited liability company's stated capital has not at any time equaled at least ~~five~~ two hundred fifty thousand dollars, or such greater amount established by the articles of incorporation, the articles of organization, or the bylaws, the venture capital corporation's or limited liability company's certificate of incorporation or certificate of organization must be dissolved or terminated, and all funds held in escrow pursuant to subsection 6, and all other remaining funds, must be returned to the investors in proportion to the investor's investments.
9. Before any investment in a venture capital corporation or limited liability company, the venture capital corporation or limited liability company shall make written disclosure of the provisions contained in subsections 5 through 8 to the potential investor.
10. If a venture capital corporation or limited liability company does not invest or provide financing with eighty percent of the funds received from investors within two years of receiving the funds, the venture capital corporation or limited liability company must be dissolved or terminated and all funds held by the corporation or limited liability company must be returned to the investors in proportion to the investor's investments.

CHAPTER 114

SENATE BILL NO. 2379

(Senators Bowman, G. Nelson, Wanzek)
(Representatives Belter, Pietsch)

VALUE-ADDED AGRICULTURE PROMOTION PROGRAM

AN ACT to create and enact a new subsection to section 10-30.5-01 of the North Dakota Century Code, relating to North Dakota development fund definitions; and to provide for a value-added agriculture promotion program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Value-added agriculture promotion program.

1. The value-added agriculture promotion board is established. The board consists of eight members as follows: the director of the department of economic development and finance or the director's representative; the agriculture commissioner or the commissioner's representative; a representative of the state board of agricultural research and education, appointed by the governor; a representative of the North Dakota state university extension service, appointed by the governor; a representative of the Bank of North Dakota, appointed by the governor; two representatives of the private sector, appointed by the governor; and a representative of the farm credit system, appointed by the governor.
2. The board shall administer the value-added agriculture promotion program and shall review business plans for value-added agriculture projects. The board shall adopt procedures and guidelines for administering the program. The board shall meet on a regular schedule to review project proposals and prioritize projects based on the projects' likelihood for success. The board shall promote the formation, development, and growth of these projects and take steps to improve the projects' chances for success.
3. If a project is selected for promotion by the board, the board shall appoint a financing advisory group for the project. The financing advisory group may include representatives of the private sector, a representative of the Bank of North Dakota, and an individual experienced in capital formation. The financing advisory group, with active assistance provided by any of the state's institutions of higher education and the local or regional economic development organization, shall assist the project in completing a feasibility study and a business plan for the project and in seeking early stage money. The financing advisory group shall assist the project in pursuing equity investors, establishing an initial board of directors, locating professional services for completion of the business plan, and in approaching lenders to fund the project development.

4. The value-added agriculture promotion program is located in the department of economic development and finance. The department shall provide any necessary administrative assistance. Members of the value-added agriculture promotion board and members of a financing advisory group are entitled to reimbursement for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for performing their duties.
5. The board may impose a fee of not more than one thousand dollars per project for review and assistance provided for the project. Fees collected under this section must be deposited in the operating fund of the department of economic development and finance and may be expended for expenses of members of the board and the financing advisory group for review and assistance provided for the project.

SECTION 2. A new subsection to section 10-30.5-01 of the North Dakota Century Code is created and enacted as follows:

"Production agriculture" means the production of crops and livestock on or near a farm as part of the regular farm enterprise directed by a farm operator and the farm operator's partners. The term does not include an investor-owned livestock feeding or milking operation located apart from a farm headquarters which is managed by employees.

Approved April 19, 2001
Filed April 19, 2001

COUNTIES

CHAPTER 115

SENATE BILL NO. 2197

(Senators Lee, Cook)

(Representatives Delmore, Huether, Koppang, B. Thoreson)

COUNTY COMMISSION TERMS AND VACANCIES

AN ACT to amend and reenact subsection 1 of section 11-07-04 and section 44-02-05 of the North Dakota Century Code, relating to the terms of office of members of the board of county commissioners and vacancies in boards of county commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 11-07-04 of the North Dakota Century Code is amended and reenacted as follows:

1. When redistricting is completed or if failure to redistrict requires at large election of commissioners as provided in section 11-07-03, all commissioners then holding office who will be elected in the same manner, either from districts or at large, as they were elected at the last election shall complete the remainder of that term of office. However, an election must be held at the next general election in any district where redistricting places two or more holdover commissioners in that district or leaves a district without a commissioner residing in the district. In those counties retaining the same method of electing county commissioners as that utilized ~~prior to~~ before a decennial, or other, redistricting, elections ~~shall~~ must continue on a staggered basis in accordance with the same classes in force ~~prior to~~ before the effective date of a redistricting ~~under this chapter~~. At the first general election following redistricting of the county or election of commissioners at large, the county commissioner offices held by commissioners whose terms would end in the month of ~~January~~ December following that general election ~~shall~~ must be open for election.

SECTION 2. AMENDMENT. Section 44-02-05 of the North Dakota Century Code is amended and reenacted as follows:

44-02-05. Vacancy in board of county commissioners - How filled. When a vacancy occurs in the board of county commissioners, the remaining members of the board, with the district judge ~~servng~~ selected by the remaining county and auditor commissioners, immediately shall appoint some suitable person to fill the vacancy from the district in which the vacancy occurred. If a majority of the officers fails to agree upon a person to fill the vacancy, the county treasurer ~~shall~~ or, if the county does not have an elected treasurer, another elective county officer must be called in

and shall act as an additional member of the board to fill the vacancy. The appointee holds office until the appointee's successor is elected at the next general election and qualified.

Approved April 18, 2001

Filed April 18, 2001

CHAPTER 116

SENATE BILL NO. 2244

(Senator Krauter)
(Representatives Froelich, Kerzman)

COUNTY CANDIDATE RESIDENCY

AN ACT to amend and reenact section 11-10-04 of the North Dakota Century Code, relating to the residence of candidates for election to a county office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-10-04. Officer must be qualified elector - Exceptions.

1. Except as otherwise specifically provided by the laws of this state, a county officer must be a qualified elector in the county in which the person is appointed, and a county commissioner must be a qualified elector in the district from which the commissioner is chosen. ~~Upon~~
2. Notwithstanding subsection 3, upon approval of the board of county commissioners of each affected county, a person may serve as an elected officer of more than one county and must be a qualified elector of one of the counties in which the person is elected.
3. A candidate for election to a county office must be, at the time of election, a qualified elector in the jurisdiction in which the candidate is to serve.
4. Two or more counties may appoint one person to fill the same office in each county and the person filling the office must be a qualified elector of one of the counties.
5. a. The boards of county commissioners of two or more counties may agree by resolution to elect a multicounty jurisdiction state's attorney pursuant to chapter 11-10.3. An agreement made between two or more counties according to this subsection must specify procedures for filing for office, the use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices, and the apportioning of election expenses. A candidate for election to the office of multicounty jurisdiction state's attorney must be a qualified elector of the multicounty jurisdiction at the time of the election; or

- b. The boards of county commissioners of two or more counties may agree by resolution to allow any candidate for the office of state's attorney to petition for office in each county, and to serve if elected, if the candidate is a qualified elector of one of the counties at the time of the election. To be elected to serve a county in which the candidate is not a resident, the candidate must receive the highest number of votes for the office in that county. Each county shall certify the results and issue certificates of election pursuant to chapter 16.1-15.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 117**HOUSE BILL NO. 1332**
(Representatives D. Johnson, Mueller)
(Senator Klein)**COUNTY TAX AND FEE REFUNDS**

AN ACT to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to counties not issuing refunds of taxes or fees unless the amount to be refunded is five dollars or more.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-10 of the North Dakota Century Code is created and enacted as follows:

Refund of taxes or fees - Minimum amount. Notwithstanding any other provision of law, a person is not entitled to a tax or fee refund, to be paid or approved by a county officer or employee, unless the amount of the refund is five dollars or more.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 118

SENATE BILL NO. 2298

(Senators Andrist, Lyson)
(Representative Severson)

COUNTY SPECIAL ASSESSMENT LEVIES

AN ACT to amend and reenact section 11-11-55.1 of the North Dakota Century Code, relating to special assessment levies by counties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-55.1 of the North Dakota Century Code is amended and reenacted as follows:

11-11-55.1. Petition or resolution for improvements - Levy of special assessments. The board of county commissioners of any county, by resolution or upon receipt of a petition of sixty percent of the landowners in a defined area, outside of the limits of any incorporated city, may install the petitioned improvements as benefit the defined area, provide for the financing of the improvements, and levy special assessments for the payment of all or part of the improvements within the defined area. In providing for the improvements, the county shall have the authority granted to municipalities in chapters 40-22, 40-23, 40-23.1, 40-24, 40-25, 40-26, 40-27, and 40-28, and the county shall comply with the provisions of those chapters in making the improvements. Whenever action is required of city officials in those chapters, the comparable county officials shall take the action.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 119**HOUSE BILL NO. 1062**

(Representative Carlisle)

(Senator Lyson)

COUNTY LAW ENFORCEMENT JURISDICTION

AN ACT to create and enact a new section to chapter 11-15 of the North Dakota Century Code, relating to the jurisdiction of county law enforcement officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-15 of the North Dakota Century Code is created and enacted as follows:

County law enforcement officer - Fresh pursuit. A county law enforcement officer in fresh pursuit may enter another county and may continue within that county in fresh pursuit to make an arrest, in compliance with a warrant or without a warrant under the conditions of section 29-06-15, if obtaining the aid of law enforcement officers having jurisdiction in that county would cause a delay permitting escape. As used in this section, "fresh pursuit" means fresh pursuit as defined in section 29-06-07.

Approved March 6, 2001

Filed March 6, 2001

CHAPTER 120

HOUSE BILL NO. 1255

(Representatives Gulleason, DeKrey, Onstad)
(Senator Bowman)

REGISTER OF DEEDS CHANGED TO RECORDER

AN ACT to create and enact a new section to chapter 11-18 of the North Dakota Century Code, relating to changing references from the register of deeds to the recorder.

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:

"Recorder" to be substituted for "register of deeds". Whenever the term "register of deeds" appears in the North Dakota Century Code, the term "recorder" or "county recorder", whichever is appropriate, must be substituted therefor. The recorder must be substituted for, take any actions previously taken by, and perform all duties previously performed by the register of deeds.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 121

SENATE BILL NO. 2173

(Senator Lee)

DOCUMENT PRESERVATION FUND AND DEED FEES

AN ACT to create and enact a new section to chapter 11-18 of the North Dakota Century Code, relating to creation of a document preservation fund; to amend and reenact section 11-18-05 of the North Dakota Century Code, relating to fees charged by the register of deeds; and to provide an expiration date.

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:

Document preservation fund. The county treasurer shall establish a document preservation fund to receive the portion of the recording fees authorized by section 11-18-05. The revenue in this fund may be used only for contracting for and purchasing equipment and software for a document preservation, storage, and retrieval system; training employees to operate the system; maintaining and updating the system; and contracting for the offsite storage of microfilm or electronic duplicates of documents for the county register of deeds' office.

⁵³ **SECTION 2. AMENDMENT.** Section 11-18-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11-18-05. Fees of register of deeds. The register of deeds shall charge and collect the following fees:

1. For recording an instrument affecting title to real estate:
 - a. Deeds, mortgages, and all other instruments not specifically provided for in this subsection, seven dollars for the first page and three dollars for each additional page. In addition, for all documents recorded under this section that list more than five sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index.
 - (1) "Page" means one side of a single legal size sheet of paper not exceeding eight and one-half inches [21.59 centimeters] in width and fourteen inches [35.56 centimeters] in length.
 - (2) The printed, written, or typed words must be considered legible by the register of deeds before the page will be accepted for recording.

⁵³ Section 11-18-05 was also amended by section 1 of House Bill No. 1105, chapter 361.

- (3) Each real estate instrument must have a legal description considered to be adequate by the register of deeds before such instrument will be accepted for recording.
 - (4) A space of at least four inches by three and one-half inches [10.16 by 8.89 centimeters] square must be provided on the first or last page of each instrument for the register of deeds' recording information. If recording information can only be placed on the reverse side of an instrument, an additional page charge must be levied.
- b. Instruments satisfying, releasing, assigning, subordinating, continuing, amending, or extending more than one instrument previously recorded in the county in which recording is requested, seven dollars for the first page and three dollars for each additional page plus three dollars for each such additional document number or book and page. In addition, for all documents recorded under this section which list more than five separate sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index.
 - c. Plats, irregular tracts, or annexations, ten dollars for one lot plus ten cents for each additional lot, with the exception of auditor's lots which must be a single charge of seven dollars.
 - d. All instruments presented for recording after June 30, 2001, must contain a one-inch [2.54-centimeter] top, bottom, or side margin on each page of the instrument for the placement of computerized recording labels. An instrument that does not conform to this margin requirement may be recorded upon payment of an additional fee of ~~two~~ ten dollars.
2. For filing any non-central indexing system instrument, ~~five~~ ten dollars.
 3. For making certified copies of any recorded instrument or filed non-central indexing system instrument, the charge is five dollars for the first page and two dollars for each additional page. For making a noncertified copy of any recorded instrument or filed non-central indexing system instrument, a fee of not more than one dollar per instrument page.
 4. ~~For making a copy of any filed non-central indexing system instrument, one dollar for each five pages or portion thereof. For making a certified copy of any non-central indexing system filed instrument, five dollars plus one dollar for each additional five pages or portion thereof.~~
 - ~~5.~~ For filing, indexing, making, or completing any statement, abstract, or certificate under the Uniform Commercial Code central filing data base, the computerized central notice system or the computerized statutory liens data base, for receiving printouts, and for other services provided through the computerized system, the fee is the same as that provided in sections 41-09-42 and 41-09-43, as applicable.
- ~~6.~~ 5. The register of deeds may establish procedures for providing access for duplicating records under the register of deeds' control. Such records

include paper, photostat, microfilm, microfiche, and electronic or computer generated instruments created by governmental employees.

7. 6. Duplicate register of deeds' records stored off-site as a security measure are not accessible for reproduction.

SECTION 3. AMENDMENT. Subsection 1 of section 11-18-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. For recording an instrument affecting title to real estate:
 - a. Deeds, mortgages, and all other instruments not specifically provided for in this subsection, ~~seven~~ ten dollars for the first page and three dollars for each additional page. In addition, for all documents recorded under this section that list more than five sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index. Three dollars of the fee collected for the first page of each instrument recorded under this subdivision must be placed in the document preservation fund.
 - (1) "Page" means one side of a single legal size sheet of paper not exceeding eight and one-half inches [21.59 centimeters] in width and fourteen inches [35.56 centimeters] in length.
 - (2) The printed, written, or typed words must be considered legible by the register of deeds before the page will be accepted for recording.
 - (3) Each real estate instrument must have a legal description considered to be adequate by the register of deeds before such instrument will be accepted for recording.
 - (4) A space of at least four inches by three and one-half inches [10.16 by 8.89 centimeters] square must be provided on the first or last page of each instrument for the register of deeds' recording information. If recording information can only be placed on the reverse side of an instrument, an additional page charge must be levied.
 - b. Instruments satisfying, releasing, assigning, subordinating, continuing, amending, or extending more than one instrument previously recorded in the county in which recording is requested, ~~seven~~ ten dollars for the first page and three dollars for each additional page plus three dollars for each such additional document number or book and page. In addition, for all documents recorded under this section which list more than five separate sections of land, a fee of one dollar for each additional section listed which is to be recorded in the tract index. Three dollars of the fee collected for the first page of each instrument recorded under this subdivision must be placed in the document preservation fund.

- c. Plats, irregular tracts, or annexations, ten dollars for one lot plus ten cents for each additional lot, with the exception of auditor's lots which must be a single charge of seven dollars.
- d. All instruments presented for recording after June 30, 2001, must contain a one-inch [2.54-centimeter] top, bottom, or side margin on each page of the instrument for the placement of computerized recording labels. An instrument that does not conform to this margin requirement may be recorded upon payment of an additional fee of two dollars.

SECTION 4. EXPIRATION DATE. Sections 1 and 3 of this Act are effective through June 30, 2005, and after that date are ineffective.

Approved April 9, 2001

Filed April 10, 2001

CHAPTER 122

HOUSE BILL NO. 1104 (Political Subdivisions Committee) (At the request of the State Auditor)

STATE AUDITOR DUTIES

AN ACT to amend and reenact sections 11-23-02 and 25-01.1-20, subsection 2 of section 27-17-02, section 36-15-06, subsection 3 of section 40-16-03, and sections 40-33-24, 40-33.1-08, 40-40-04, 40-61-07, and 61-24-10 of the North Dakota Century Code, relating to the duties of the state auditor; and to repeal sections 40-40-12 and 54-10-12 of the North Dakota Century Code, relating to the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-23-02 of the North Dakota Century Code is amended and reenacted as follows:

11-23-02. Auditor to prepare budget of county expenditures. The county auditor shall prepare an annual budget for the general fund, each special revenue fund, and each debt service fund of the county in the form prescribed by the state auditor. The budget must set forth specifically:

1. The detailed breakdown of the estimated revenues and appropriations requested for each fund for the ensuing year.
2. The detailed breakdown of the revenues and expenditures for each fund for the preceding year.
3. The detailed breakdown of estimated revenues and expenditures for each fund for the current year.
4. The transfers in or out for each fund for the preceding year and the estimated transfers in or out for the current year and the ensuing year.
5. The beginning and ending balance of each fund or estimates of the balances for the preceding year, current year, and ensuing year.
6. The tax levy request for any funds levying taxes for the ensuing year.
7. The certificate of levy showing the amount levied for each fund and the total amount levied.
8. The budget must be prepared on the same basis of accounting used by the county for its annual financial reports.
9. The amount of cash reserve for the general fund and each special revenue fund, not to exceed seventy-five percent of the appropriation for the fund.

The county auditor shall transmit one copy of such annual budget to the state auditor no later than January first of each year.

SECTION 2. AMENDMENT. Section 25-01.1-20 of the North Dakota Century Code is amended and reenacted as follows:

25-01.1-20. Care and custody of funds belonging to patients of state institutions. The superintendent of any state institution under the management and control of the supervising department, when the care and custody of any funds belonging to patients thereof are by law devolved upon the superintendent, shall keep accurate accounts of such funds in books provided for that purpose and shall pay out such funds under such rules and regulations as may be prescribed by law or by the supervising department, taking proper vouchers therefor in all cases from the patient or responsible representative of such patient. Each superintendent shall give a bond in such sum as may be required by law, or as may be prescribed by the supervising department, ~~to be subject to the approval of the state auditor,~~ conditioned for the faithful performance of duties and a due accounting for the funds entrusted to the superintendent's care.

SECTION 3. AMENDMENT. Subsection 2 of section 27-17-02 of the North Dakota Century Code is amended and reenacted as follows:

2. In lieu of receiving judicial retirement salary under this chapter, a judge of the supreme court or a judge of the district court, or in the event of the judge's death, the surviving spouse or legal representative, upon application to the ~~state auditor~~ supreme court at any time after he ceases to be such judge and without having made application for and received judicial retirement salary under this chapter, is entitled to receive the amount of judicial retirement assessments heretofore or hereafter deducted and withheld by the state of North Dakota. If such judge has received judicial retirement salary under this chapter, the amount of judicial retirement assessments deducted and withheld by the state of North Dakota in excess of judicial retirement salary received by such judge, are payable, in the event of his death, but not otherwise, to the surviving spouse if living, otherwise to his legal representative.

⁵⁴ **SECTION 4. AMENDMENT.** Section 36-15-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-06. Fees of appraisers - How paid. Each member of the board of appraisers who is not an agent of the board is entitled to reasonable compensation for services rendered. Compensation for all board of appraiser members must be the same and must be paid out of the fund created for the purpose of carrying out the provisions of this chapter, upon presentation of vouchers ~~to the state auditor~~ duly approved by the board.

SECTION 5. AMENDMENT. Subsection 3 of section 40-16-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Records. To maintain a complete record of all financial transactions of the city which includes receipts, disbursements, fund balances, other assets, liabilities, and equity. ~~Records shall be maintained as prescribed by the state auditor.~~

⁵⁴ Section 36-15-06 was repealed by section 10 of Senate Bill No. 2347, chapter 316.

SECTION 6. AMENDMENT. Section 40-33-24 of the North Dakota Century Code is amended and reenacted as follows:

40-33-24. Funds of jointly operated utilities. All funds of any jointly operated utility as provided in section 40-33-22 shall not be subject to the provisions of sections 40-33-10 and 40-33-11, but shall be kept separate and apart from all other funds of any participating municipality and shall be disbursed in the manner provided by the governing board thereof. ~~All books and accounts of such jointly operated utility shall be examined periodically by the state auditor, who shall be reimbursed by the utility for the costs of such examination. The state auditor shall render reports upon such examinations to the governing bodies of the participating municipalities.~~

SECTION 7. AMENDMENT. Section 40-33.1-08 of the North Dakota Century Code is amended and reenacted as follows:

40-33.1-08. Moneys of the authority. All moneys of an authority shall be paid to the city auditor as agent of the authority, who shall not commingle such moneys with any other moneys. Such moneys shall be deposited in a separate bank account or accounts. The moneys in such accounts shall be paid out by the auditor on requisition of the chairman of the authority or of such other person or persons as the authority may authorize to make such requisitions after audit by the auditor. All deposits of such moneys shall, if required by the auditor or the authority, be secured by obligations of the United States or of the state of North Dakota of a market value equal at all times to the amount of the deposit, and all banks and trust companies are authorized to give such security for such deposits. The auditor and his legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other records and papers relating to its financial standing. An authority shall have power, notwithstanding the provisions of this section, to contract with the holders of any of its notes as to the custody, collection, securing, investment, and payment of any moneys of the authority, or any moneys held in trust or otherwise for the payment of notes or in any way to secure notes, and to carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. Moneys held in trust or otherwise for the payment of notes or in any way to secure notes and deposits of such moneys may be acquired in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits.

~~The accounts of an authority shall be subject to the supervision of the state auditor.~~

SECTION 8. AMENDMENT. Section 40-40-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-40-04. Municipality to prepare preliminary budget statement. The governing body of each municipality, annually on or before September tenth, shall make, ~~on suitable blanks prescribed by the state auditor,~~ an itemized statement known as the preliminary budget statement showing the amounts of money which, in the opinion of the governing body, will be required for the proper maintenance, expansion, or improvement of the municipality during the year, ~~and giving other information relating to the finances of the municipality as the state auditor may require.~~

SECTION 9. AMENDMENT. Section 40-61-07 of the North Dakota Century Code is amended and reenacted as follows:

40-61-07. Moneys of the authority. All moneys of an authority shall be paid to the city auditor as agent of the authority, who shall not commingle such moneys with any other moneys. Such moneys shall be deposited in a separate bank account or accounts. The moneys in such accounts shall be paid out by the auditor on requisition of the chairman of the authority or of such other person or persons as the authority may authorize to make such requisitions after audit by the auditor. Approval of the payment of an account or claim shall be recorded in the record of the proceedings of the authority and this shall be sufficient to indicate approval without requiring the approving members to sign or initial the voucher or order for payment. All deposits of such moneys shall, if required by the auditor or the authority, be secured by obligations of the United States or of the state of North Dakota of a market value equal at all times to the amount of the deposit, and all banks and trust companies are authorized to give such security for such deposits. The auditor and his legally authorized representatives are authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other records and papers relating to its financial standing. An authority shall have power, notwithstanding the provisions of this section, to contract with the holders of any of its bonds as to the custody, collection, securing, investment, and payment of any moneys of the authority, or any moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds, and to carry out any such contract notwithstanding that such contract may be inconsistent with the previous provisions of this section. Moneys held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of such moneys may be acquired in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits.

~~The accounts of an authority shall be subject to the supervision of the state auditor.~~

SECTION 10. AMENDMENT. Section 61-24-10 of the North Dakota Century Code is amended and reenacted as follows:

61-24-10. Certified copies of levy and budget sent to county auditors. Immediately after completion of the budget and the adoption of the annual tax levy by the board of directors of the district, but not later than October first, the secretary of the district shall send one certified copy of the levy as adopted and one certified copy of the budget to the county auditor of each county in the district; ~~and one certified copy of the levy and one certified copy of the budget to the state auditor.~~

SECTION 11. REPEAL. Sections 40-40-12 and 54-10-12 of the North Dakota Century Code are repealed.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 123**SENATE BILL NO. 2215**
(Senators Wardner, Fischer, Heitkamp)
(Representatives Aarsvold, Keiser)**COUNTY DEBT ADJUSTMENT BOARDS ELIMINATED**

AN ACT to repeal chapter 11-26 of the North Dakota Century Code, relating to county debt adjustment boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 11-26 of the North Dakota Century Code is repealed.

Approved March 21, 2001
Filed March 21, 2001

DSMDOT528W 'KEEP' ENDED BY DISALLOWED CONTROL WORD '.pa'.
DSMMOM395I 'BBBL0400' LINE 1: .pa nstart
DSMMOM397I 'BBBL0400' WAS IMBEDDED AT LINE 690 OF '.EDFIM'
DSMMOM397I '.EDFIM' WAS IMBEDDED AT LINE 10 OF '.IM'
DSMMOM397I '.IM' WAS IMBEDDED AT LINE 7 OF 'CNTYS'

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 124

HOUSE BILL NO. 1401

(Representatives Kroeber, Fairfield, Kretschmar, Mahoney)
(Senators Robinson, Wardner)

INMATE FINANCIAL OBLIGATIONS AND COSTS

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to inmate accounts, payment of inmate financial obligations, and payment for medical and health care costs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Establishment of inmate accounts - Withholding funds for inmate financial obligations - Health care costs - Payment of funds to inmate upon release.

1. The correctional facility administrator shall establish an inmate account for each inmate.
2. The correctional facility administrator may withdraw funds from an inmate's account to meet the inmate's legitimate financial obligations, including child support and restitution. The correctional facility administrator may withdraw funds from the inmate's account to pay for the inmate's medical, dental, and eye care costs while the inmate is incarcerated in the correctional facility. Before the funds may be withdrawn, the inmate must first receive written notice and be provided a hearing with the right to correctional facility staff assistance and the right to review by the correctional facility administrator. No written notice or hearing is required if the withdrawal of funds is being made to meet the inmate's child support obligation.
3. A correctional facility administrator may collect fees from inmates to offset health care costs as follows:
 - a. For a medical visit, up to ten dollars per medical visit made at the request of an inmate.
 - b. For self-inflicted injuries, the total amount of medical costs incurred.
 - c. For necessary health care services, the correctional facility may seek reimbursement from the inmate up to the total amount of

health care costs incurred. If the inmate has health insurance coverage, a medical or health care provider must file a claim for reimbursement from the health insurance coverage carrier. A correctional facility may not assess an inmate for any costs associated with an intake health care assessment and related testing or for an examination of an inmate made at the request of the facility.

- d. For elective health care requested by an inmate and as allowed by correctional facility policy, the inmate is responsible for the amount of the costs incurred.
 - e. A correctional facility may not deny necessary and nonelective medical and health care to an inmate who does not have health insurance or does not have the ability to pay the costs of the medical or health care.
4. The correctional facility administrator shall pay an inmate all funds in the inmate's account when the inmate is discharged from the correctional facility or when the inmate is transferred to another correctional facility, less the inmate's outstanding obligations to the correctional facility.
 5. This section does not limit or alter the provisions of chapter 14-09 relating to income withholding orders for child support.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 125

HOUSE BILL NO. 1398

(Representatives Kroeber, Fairfield, Kretschmar)
(Senators Robinson, Wardner)

CORRECTIONAL FACILITY RECORDS CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to correctional facility files and records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Correctional facility files and records confidentiality.

1. The medical, psychological, and treatment records of an inmate are confidential and may not be disclosed directly or indirectly to any person, organization, or agency, except as provided in this section. A court may order the inspection of the records, or parts of the records, upon an application to the court and a showing that there is a proper and legitimate purpose for the inspection and the provision of written authorization from the inmate for the inspection. Notwithstanding any other provision of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, medical, psychological, or treatment records may be inspected by or disclosed to the following persons, organizations, or agencies without prior authorization from the inmate or an order from the court:
 - a. A criminal justice agency as defined in subsection 4 of section 44-04-18.7.
 - b. A division, department, official, or employee of the department of corrections and rehabilitation.
 - c. A federal, state, regional, county, or municipal correctional facility receiving physical custody of an inmate from the original correctional facility.
 - d. A municipal or district court.
 - e. The department of human services, a public hospital or treatment facility, or a licensed private hospital or treatment facility.
2.
 - a. A person, agency, or institution governed by statutory confidentiality requirements and receiving information or records under this section shall maintain the confidentiality requirements.

- b. Except as provided in subdivision a of this subsection, a person, organization, or agency receiving confidential records under subsection 1 may not redisclose the records and must maintain the confidentiality of the records.
3. The employment or work release status of an inmate is an open record.
4. Records with respect to inmate identification, charges, criminal convictions, bail information, and intake and projected release dates are open records.
5. Records with respect to a sentenced inmate's institutional discipline and conduct and protective management are exempt records as defined under section 44-04-17.1.
6. Institutional discipline and conduct and protective management records of all other inmates are confidential records and may only be disclosed as provided in subsection 1.

Approved April 13, 2001

Filed April 13, 2001

CHAPTER 126

SENATE BILL NO. 2061

(Government and Veterans Affairs Committee)

(At the request of the Department of Corrections and Rehabilitation)

PENITENTIARY OFFICERS

AN ACT to amend and reenact section 12-47-05 of the North Dakota Century Code, relating to officers of the penitentiary and its affiliated facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-47-05 of the North Dakota Century Code is amended and reenacted as follows:

12-47-05. Officers of penitentiary. The officers of the penitentiary ~~shall be~~ one include a warden, who ~~shall be~~ is its general superintendent; at least one deputy warden; and such other officers, agents, and employees as may be necessary. The director of the division of adult services, with the concurrence of the director of the department of corrections and rehabilitation, may appoint a warden for an affiliated facility of the penitentiary. A warden of an affiliated facility of the penitentiary is under the supervision and direction of the director of the division of adult services and has those powers and duties established by the director of the division of adult services which are consistent with this chapter, chapter 12-48, and chapter 12-48.1.

Approved March 16, 2001

Filed March 16, 2001

CHAPTER 127

HOUSE BILL NO. 1044

(Legislative Council)
(Criminal Justice Committee)

DEPARTMENT OF CORRECTIONS RECORDS

AN ACT to amend and reenact sections 12-47-36 and 12-59-04 of the North Dakota Century Code, relating to open records and parole records of the department of corrections and rehabilitation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-47-36 of the North Dakota Century Code is amended and reenacted as follows:

12-47-36. Records ~~confidential~~ exempt - Confidential - Exceptions.

1. The case history records of the department of corrections and rehabilitation or its divisions or departments relating to persons in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation are exempt records as defined in section 44-04-17.1. Upon application to the district court, with service of the application on the department of corrections and rehabilitation and opportunity for the department to submit a written response, the court may order the inspection of a case history record unless there is a showing by the department of corrections and rehabilitation that a proper and legitimate reason exists for denying inspection of the case history record. If the court issues an order allowing inspection, the court shall allow the department of corrections and rehabilitation to remove all identifying information that may create a risk of harm to property or to any person. As used in this section, "case history record" means any record of a person in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation except for medical, psychological, and treatment records and legal files. The term includes inmate disciplinary proceedings, administrative and disciplinary segregation placements, institutional and criminal investigation reports, supervision histories, job placements, education programs, inmate financial accounts under section 12-48-15, and protective management cases.
2. The medical, psychological, and treatment, ~~or social~~ records of the department of corrections and rehabilitation or its divisions or departments relating to persons in the custody or under the supervision and management of the division of adult services of the department of corrections and rehabilitation must be kept are confidential, and may not be disclosed directly or indirectly to any person, organization, or agency, except as otherwise provided in this section. A district court may order the inspection of ~~such~~ medical, psychological, and treatment records, or parts of such those records, upon application to the court and a showing that there is a proper and legitimate purpose for the inspection of the records, with service of the application on the

department of corrections and rehabilitation and opportunity for the department of corrections and rehabilitation to submit a written response.

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, records may be inspected by or disclosed to the following persons, organizations, or agencies without prior application to the court may inspect case history, medical, psychological, or treatment records: ~~the~~

 - a. The governor; ~~the~~
 - b. The pardon advisory board, if the governor has appointed a pardon advisory board; ~~the~~
 - c. The parole board; ~~any~~
 - d. Any division, department, official, or employee of the department of corrections and rehabilitation; ~~another~~
 - e. Another state receiving a parolee or probationer under the provisions of chapter 12-56 or 12-56.1; ~~a~~
 - 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; ~~the~~
 - g. The employees in the office of the attorney general and investigators, consultants, or experts retained by the state; ~~the~~
 - 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; ~~the state's attorney and~~
 - i. The district court of the county where the judgment of conviction was entered; ~~a~~
 - 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; ~~or municipal, county, state, or federal law enforcement agencies~~
 - k. A criminal justice agency as defined in section 44-04-18.7; or
 - l. The United States social security administration and veterans administration.
4. Records with respect to the person's identity, location, legal files except records under court seal, criminal convictions, or projected date of release, except for the records of a person who is under protective management, are open records.
5. Medical, psychological, or treatment records may be disclosed without prior application to the court to a public hospital or treatment facility, the

department of human services, or to a licensed private medical or treatment facility, when necessary for the evaluation, treatment, or care of a person who is or who has been in the custody of, or is or who has been under the supervision and management of, the adult services division of the department of corrections and rehabilitation.

6. A criminal defendant's presentence investigation report, together with any attachment or addendum, is subject to rule 32 of the North Dakota Rules of Criminal Procedure and any amendments made thereto.
7. The parole board may permit the inspection of a person's preparole report, or parts of the report, prepared for the parole board. ~~The employment status of a person in the custody of or under the supervision and management of the department of corrections and rehabilitation may be disclosed to an agency or official charged with the enforcement of child support. Medical, psychological, or treatment records may be disclosed without prior application to the court to a public hospital or treatment facility, the department of human services, or to a licensed private medical or treatment facility, when necessary for the evaluation, treatment, or care of a person in the custody or under the supervision of the department of corrections and rehabilitation.~~
8. Any person, organization, or agency receiving exempt or confidential records under this section shall maintain the closed or confidential nature of the records and may not redisclose the records.
9. The department of corrections and rehabilitation shall maintain the confidentiality of witness protection program records and legal files under seal.

SECTION 2. AMENDMENT. Section 12-59-04 of the North Dakota Century Code is amended and reenacted as follows:

12-59-04. ~~Records confidential~~ Parole records - Inspection. All parole records of the department of corrections and rehabilitation records, including preparole reports, and the supervision history, obtained in the discharge of official duty by any member of the parole board or employee of a division or department of the department of corrections and rehabilitation, ~~are confidential and~~ on behalf of the parole board may not be disclosed except in the manner provided under section 12-47-36. An application for parole and the decision of the parole board on the application are open records.

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

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 128

HOUSE BILL NO. 1350

(Representative Mahoney)
(Senator C. Nelson)

PRISONER TRANSPORTATION

AN ACT to create and enact a new section to chapter 12-47 of the North Dakota Century Code, relating to the transporting of certain prisoners.

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:

Transporting of prisoners. A prisoner who has been charged with, pled guilty to, or been convicted of a class A or class AA felony in this state may not be transported except by employees of the department of corrections and rehabilitation or by law enforcement officers or correctional officers employed by a governmental agency. For purposes of this section, "governmental agency" means an agency or department of this state or of any political subdivision of this state, of another state or of a political subdivision of another state, or of the United States.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 129

HOUSE BILL NO. 1431

(Representatives DeKrey, Berg, R. Kelsch, Monson)

CORRECTIONAL SYSTEM STUDY

AN ACT to provide for a legislative council study of this state's correctional system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Correctional system - Legislative council study. During the 2001-02 interim, the legislative council shall consider studying the correctional system in North Dakota, including its functions, responsibilities, funding, causes for increases in the state's inmate population, and the effectiveness of sentencing laws, incarceration, and treatment. The legislative council shall identify possible cost-effective alternatives to incarceration and methods for lowering recidivism and the state's crime rate. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 5, 2001
Filed April 5, 2001

CRIMINAL CODE

CHAPTER 130

HOUSE BILL NO. 1453

(Representative Disrud)

(Senator Fischer)

PUBLIC DUTY AND PROBATION CONDITIONS

AN ACT to create and enact a new subsection to section 12.1-05-02 and a new subsection to section 12.1-32-07 of the North Dakota Century Code, relating to execution of public duty and conditions of probation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-05-02 of the North Dakota Century Code is created and enacted as follows:

Conduct engaged in by an individual at the direction of a public servant, known by that individual to be a law enforcement officer, to assist in the investigation of a criminal offense is justified unless the individual knows or has a firm belief, unaccompanied by substantial doubt, that the conduct is not within the law enforcement officer's official duties or authority. For purposes of this subsection, conduct "not within the law enforcement officer's official duties or authority" is conduct in which the law enforcement officer alone could not lawfully engage in that officer's official capacity. When practicable, permission must be obtained from a parent or guardian of a minor who is under the age of eighteen years and is neither married nor in the military service of the United States before the minor may engage in conduct, other than the providing of information, to assist in a criminal investigation under the direct supervision of a public servant.

⁵⁵ **SECTION 2.** A new subsection to section 12.1-32-07 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, the court may authorize the defendant to assist law enforcement officers in an investigation of a criminal offense upon the terms and conditions as the court may require by written order. The court shall hold a hearing in camera before issuing an order under this subsection. The order must be sealed and is subject to inspection only upon order of the court.

Approved March 21, 2001
Filed March 21, 2001

⁵⁵ Section 12.1-32-07 was also amended by section 3 of House Bill No. 1363, chapter 133, and section 1 of Senate Bill No. 2135, chapter 139.

CHAPTER 131

HOUSE BILL NO. 1092

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

ESCAPES

AN ACT to create and enact a new subsection to section 12.1-08-06 of the North Dakota Century Code, relating to escapes and jurisdiction over escapes; to amend and reenact subsection 1 of section 12.1-08-06 of the North Dakota Century Code, relating to escapes; to repeal sections 29-03-15 and 29-03-16 of the North Dakota Century Code, relating to escapes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-08-06 of the North Dakota Century Code is created and enacted as follows:

The jurisdiction of a violation of this section when the person is in the legal custody of a warden of the penitentiary, the department of corrections and rehabilitation, or other lawful authority is in the county where the violation occurred if the violation occurred within this state, and is in Burleigh County or in the county in which the order committing the person to official detention was entered if the violation occurred outside this state.

SECTION 2. AMENDMENT. Subsection 1 of section 12.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

1. A person is guilty of escape if, without lawful authority, the person removes or attempts to remove himself from official detention or fails to return to official detention following temporary leave granted for a specified purpose or limited period. A person who is subject to official detention under this section is guilty of escape, if while outside the state of North Dakota and without lawful authority, the person removes or attempts to remove himself from official detention, or fails to return to official detention following temporary leave granted for a specified purpose or limited period, when at the time the person is in the legal custody of a warden of the penitentiary, department of corrections and rehabilitation, or other competent authority by virtue of a lawful commitment to official detention.

SECTION 3. REPEAL. Sections 29-03-15 and 29-03-16 of the North Dakota Century Code are repealed.

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

Approved February 16, 2001
Filed February 16, 2001

CHAPTER 132

SENATE BILL NO. 2426

(Senators Trenbeath, Lyson, Traynor)
(Representatives Klemin, Kretschmar, Mahoney)

JUROR HARASSMENT AND COMMUNICATIONS

AN ACT to amend and reenact section 12.1-09-04 of the North Dakota Century Code, relating to harassment of and communication with jurors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-09-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-09-04. Harassment of and communication with jurors.

1. A person is guilty of a class A misdemeanor if, with intent to influence the official action of another as juror, ~~he that person~~ communicates directly or indirectly with him orally or by means of a sound broadcasting or transmitting device the juror, other than as part of the proceedings in a case, or harasses or alarms ~~him~~ the juror. A person is guilty of a class A misdemeanor if, with the intent to harass or annoy a former juror because of the verdict returned by the jury or the participation of the juror in the verdict, that person communicates directly or indirectly with the juror in a manner that intimidates the juror or conveys a threat of injury or damage to the juror's property or person. Conduct directed against the juror's spouse or other relative residing in the same household with the juror shall be deemed conduct directed against the juror.
2. In this section, "juror" means a grand juror or a petit juror and includes a person who has been drawn or summoned to attend as a prospective juror, and any referee, arbitrator, umpire, or assessor authorized by law to hear and determine any controversy.

Approved March 28, 2001

Filed March 28, 2001

CHAPTER 133

HOUSE BILL NO. 1363

(Representatives Delmore, Carlisle, Mahoney)
(Senators Lyson, C. Nelson)

ASSAULT IN DOMESTIC VIOLENCE CASES

AN ACT to create and enact a new subsection to section 12.1-17-01 of the North Dakota Century Code, relating to a mandatory assessment process for simple assault in domestic violence cases; to amend and reenact subsection 2 of section 12.1-17-01 and subsection 1 of section 12.1-32-07 of the North Dakota Century Code, relating to the penalty for assault in a domestic violence case and supervision of probation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Simple assault is a class B misdemeanor except~~ 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; ~~in which case the offense is a class C felony.~~
 - 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.

SECTION 2. A new subsection to section 12.1-17-01 of the North Dakota Century Code is created and enacted as follows:

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.

⁵⁶ **SECTION 3. AMENDMENT.** Subsection 1 of section 12.1-32-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, except for a violation of subdivision b of subsection 2 of section 12.1-17-01, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.

Approved April 13, 2001
Filed April 13, 2001

⁵⁶ Section 12.1-32-07 was also amended by section 2 of House Bill No. 1453, chapter 130, and section 1 of Senate Bill No. 2135, chapter 139.

CHAPTER 134

SENATE BILL NO. 2035

(Legislative Council)
(Criminal Justice Committee)

SEX CRIMES

AN ACT to create and enact sections 12.1-20-05.1 and 12.1-20-12.2 and a new section to chapter 29-04 of the North Dakota Century Code, relating to sexual offenses, the luring of minors by computer, and a statute of limitations for gross sexual imposition; to amend and reenact subsection 4 of section 12.1-20-02, sections 12.1-20-04, 12.1-20-05, 12.1-20-12.1, subsection 1 of section 12.1-31-01, subdivision e of subsection 1 of section 12.1-32-15, and subdivision c of subsection 5 of section 15-36-15.1 of the North Dakota Century Code, relating to sexual offenses and disorderly conduct; to repeal section 12.1-22-03.1 of the North Dakota Century Code, relating to surreptitious intrusion; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

4. "Sexual contact" means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.

SECTION 2. AMENDMENT. Section 12.1-20-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-04. Sexual imposition.

4. A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act or sexual contact, is guilty of ~~an offense~~ a class B felony if the actor ~~compels~~:
 1. Compels the other person to submit by any threat that would render a person of reasonable firmness incapable of resisting; or
 2. ~~The offense is a class C felony unless the victim is a minor, fifteen years of age or older, in which case it is a class B felony.~~ Engages in a sexual act or sexual contact with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang as defined in section 12.1-06.2-01.

SECTION 3. AMENDMENT. Section 12.1-20-05 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-05. Corruption or solicitation of minors.

1. An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with another person or who causes another person to engage in a sexual act a minor, is guilty of a class A misdemeanor if the ~~other person~~ victim is a minor fifteen years of age or older, ~~or is guilty of a class C felony if the adult is at least twenty-two years of age and the other person is a minor fifteen years of age or older.~~
2. An adult who solicits a ~~person under the age of fifteen years~~ with the intent to engage in a sexual act or sexual contact with a minor under age fifteen or engages in or causes another to engage in a sexual act when the adult is at least twenty-two years of age and the victim is a minor fifteen years of age or older, is guilty of a class A ~~misdemeanor~~ C felony.

SECTION 4. Section 12.1-20-05.1 of the North Dakota Century Code is created and enacted as follows:

12.1-20-05.1. Luring minors by computer. An adult is guilty of luring minors by computer when:

1. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system that allows the input, output, examination, or transfer of computer data or computer programs from one computer to another to initiate or engage in such communication with a person the adult believes to be a minor; and
2. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.
3. A violation of this section is a class A misdemeanor, but if the adult is twenty-two years of age or older or the adult reasonably believes the minor is under the age of fifteen, violation of this section is a class C felony.

SECTION 5. AMENDMENT. Section 12.1-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-12.1. Indecent exposure.

1. A person shall be guilty of a class B misdemeanor for, 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:
4. ~~Knowingly exposing one's penis, vulva, or anus in a public place with the intent to annoy or harass another person.~~

2- Masturbating

- a. Masturbates in a public place; or
- b. Exposes one's penis, vulva, or anus in a public place.

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.

SECTION 6. Section 12.1-20-12.2 of the North Dakota Century Code is created and enacted as follows:

12.1-20-12.2. Surreptitious intrusion.

1. An individual, with the intent to arouse, appeal to, or gratify that individual's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that individual does any of the following:

- a. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously gazes, stares, or peeps in the window or any other aperture of a house or place of dwelling of another.
- b. With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or any other aperture of a house or place of dwelling of another.
- c. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously gazes, stares, or peeps in the window or other aperture of a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.
- d. With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or other aperture of a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.1, or after being required to register under section 12.1-32-15.

SECTION 7. AMENDMENT. Subsection 1 of section 12.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual is guilty of a class B misdemeanor if, with intent to harass, annoy, or alarm another person or in reckless disregard of the fact that another person is harassed, annoyed, or alarmed by the individual's behavior, the individual:
 - a. Engages in fighting, or in violent, tumultuous, or threatening behavior;
 - b. Makes unreasonable noise;
 - c. In a public place, uses abusive or obscene language, knowingly exposes that individual's penis, vulva, or anus, or makes an obscene gesture;
 - d. Obstructs vehicular or pedestrian traffic, or the use of a public facility;
 - e. Persistently follows a person in or about a public place or places;
 - f. While loitering in a public place for the purpose of soliciting sexual contact, the individual solicits the contact;
 - g. Creates a hazardous, physically offensive, or seriously alarming condition by any act that serves no legitimate purpose; or
 - h. Engages in harassing conduct by means of intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person.

⁵⁷ **SECTION 8. AMENDMENT.** Subdivision e of subsection 1 of section 12.1-32-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-05.1, 12.1-20-06, 12.1-20-07, 12.1-20-11, 12.1-20-12.1, or 12.1-20-12.2, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, or an equivalent ordinance, or an attempt to commit these offenses.

SECTION 9. AMENDMENT. Subdivision c of subsection 5 of section 15-36-15.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. "Sexual offense" means a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, or ~~12.1-22-03.1~~ 12.1-20-12.2, or chapter 12.1-27.2, or an equivalent ordinance.

⁵⁷ Section 12.1-32-15 was also amended by section 1 of Senate Bill No. 2446, chapter 140.

SECTION 10. A new section to chapter 29-04 of the North Dakota Century Code is created and enacted as follows:

Prosecution for gross sexual imposition. Except as otherwise provided by law, a prosecution for a violation of subdivision a of subsection 1 of section 12.1-20-03 must be commenced in the proper court within seven years after the commission of the offense.

SECTION 11. REPEAL. Section 12.1-22-03.1 of the North Dakota Century Code is repealed.

Approved March 12, 2001

Filed March 12, 2001

CHAPTER 135

SENATE BILL NO. 2254

(Senators Lyson, Cook, Watne)
(Representatives Carlisle, Porter)

SEXUAL ABUSE AND ASSAULT

AN ACT to amend and reenact sections 12.1-20-06 and 12.1-20-07 of the North Dakota Century Code, relating to sexual abuse of wards and sexual assault; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-06. Sexual abuse of wards. A person who engages in a sexual act with another person, or any person who causes another to engage in a sexual act is guilty of a class ~~A misdemeanor~~ C felony if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person.

SECTION 2. AMENDMENT. Section 12.1-20-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-07. Sexual assault.

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:
 - a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;
 - b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;
 - c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;
 - d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;
 - e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise

responsible for general supervision of the other person's welfare;
or

- f. The other person is a minor, fifteen years of age or older, and the actor is an adult.
2. The offense is a class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, a class A misdemeanor if the actor's conduct violates ~~subdivision d of subsection 4 or~~ subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.

Approved March 22, 2001

Filed March 22, 2001

CHAPTER 136

SENATE BILL NO. 2116

(Judiciary Committee)

(At the request of the Attorney General)

TOBACCO SALE TO MINORS

AN ACT to amend and reenact section 12.1-31-03 and subsection 17 of section 27-20-02 of the North Dakota Century Code, relating to the sale of tobacco to minors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-31-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-31-03. Sale of tobacco to minors and use by minors prohibited.

1. It is an infraction for any person to sell or furnish to a minor, or procure for a minor, cigarettes, cigarette papers, cigars, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. As used in this subsection, "sell" includes dispensing from a vending machine under the control of the actor.
2. It is ~~an infraction~~ a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. However, an individual under eighteen years of age may purchase and possess tobacco as part of a compliance survey program when acting with the permission of the individual's parent or guardian and while acting under the supervision of any law enforcement authority. A state agency, city, county, board of health, tobacco retailer, or association of tobacco retailers may also conduct compliance surveys, after coordination with the appropriate local law enforcement authority.
3. A city or county may adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors which ~~is more stringent than this section~~ includes prohibitions in addition to those in subsection 1 or 2. Any ordinance or resolution adopted which deems must include provisions deeming a violation of subsection 4 or 2 a noncriminal violation and must provide for a fee of not less than twenty-five dollars for a minor fourteen years of age or older who has been charged with an offense under subsection 2. The failure to post a required bond or pay an assessed fee by an individual found to have violated the ordinance or resolution is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.
4. A minor fourteen years of age or older found to have violated subsection 2 must pay a fee of twenty-five dollars.
 - a. Any individual who has been cited for a violation ~~that is designated a noncriminal offense~~ of subsection 2 may appear before a court of

competent jurisdiction and pay the ~~statutory~~ fee by the time scheduled for a hearing, or if bond has been posted, may forfeit the bond by not appearing at the scheduled time. An individual appearing at the time scheduled in the citation may make a statement in explanation of that individual's action and the judge may waive, reduce, or suspend the ~~statutory~~ fee or bond, or both. If the individual cited follows the procedures of this subdivision, that individual has admitted the violation and has waived the right to a hearing on the issue of commission of the violation. The bond required to secure appearance before the court must be identical to the ~~statutory~~ fee. This subdivision does not allow a ~~hearing~~ citing officer to receive the ~~statutory~~ fee or bond.

- b. If an individual cited for a violation ~~that is designated a noncriminal offense of subsection 2~~ does not choose to follow ~~any procedure~~ the procedures provided under subdivision a, that individual may request a hearing on the issue of the commission of the violation ~~charged cited~~. The hearing must be held at the time scheduled in the citation or at some future time, not to exceed ninety days later, set at that first appearance. At the time of a request for a hearing on the issue on commission of the violation, the individual ~~charged cited~~ shall deposit with the court an appearance bond equal to the ~~statutory~~ fee for the violation ~~charged cited~~.
 - c. The failure to post bond or to pay an assessed fee is punishable as a contempt of court, except a minor may not be imprisoned for the contempt.
5. The ~~state~~ prosecution must prove the commission of a ~~charged cited~~ violation ~~at the hearing~~ under ~~this section~~ subsection 2 by a preponderance of the evidence.
 4. 6. A law enforcement officer ~~or juvenile court~~ that cites a minor for violation of this section shall mail a notice of the violation to the parent or legal guardian of the minor within ten days of the citation.
 7. A person adjudged guilty of contempt for failure to pay a fee or fine may be sentenced by the court to a sanction or order designed to ensure compliance with the payment of the fee or fine or to an alternative sentence or sanction including community service.

⁵⁸ **SECTION 2. AMENDMENT.** Subsection 17 of section 27-20-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

17. "Unruly child" means a child who:
 - a. Is habitually and without justification truant from school;

⁵⁸ Section 27-20-02 was also amended by section 9 of House Bill No. 1049, chapter 55, and section 1 of House Bill No. 1358, chapter 288.

- b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
 - c. Has committed an offense applicable only to a child, except for an offense committed by a minor fourteen years of age or older under subsection 2 of section 12.1-31-03 or an equivalent local ordinance or resolution;
 - d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; ~~or~~
 - e. Has committed an offense in violation of section 39-08-18 or 5-01-08; ~~and~~ or
 - f. Is under the age of fourteen years and has purchased, possessed, smoked, or used tobacco or tobacco-related products in violation of subsection 2 of section 12.1-31-03; and
- f. g. In any of the foregoing instances is in need of treatment or rehabilitation.

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 137

SENATE BILL NO. 2079

(Judiciary Committee)
(At the request of the Supreme Court)

TEMPORARY PROTECTION AND RESTRAINING ORDERS

AN ACT to amend and reenact subsections 4 and 7 of section 12.1-31.2-01 and subsection 3 of section 14-07.1-03 of the North Dakota Century Code, relating to temporary protection and disorderly conduct restraining orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 7 of section 12.1-31.2-01 of the North Dakota Century Code are amended and reenacted as follows:

4. If the petition for relief alleges reasonable grounds to believe that an individual has engaged in disorderly conduct, the court, pending a full hearing, may grant a temporary disorderly conduct restraining order ordering the individual to cease or avoid the disorderly conduct or to have no contact with the person requesting the order. A temporary restraining order may be entered only against the individual named in the petition. The court may issue the temporary restraining order without giving notice to the respondent. The Unless otherwise terminated by the court, the temporary restraining order is in effect for not more than thirty days, unless otherwise terminated by the court until a restraining order issued under subsection 5 is served.
7. A disorderly conduct restraining order must contain a conspicuous notice to the respondent providing:
 - a. The specific conduct that constitutes a violation of the order;
 - b. Notice that violation of the restraining order is punishable by imprisonment of up to one year or a fine of up to ~~one~~ two thousand dollars or both; and
 - c. Notice that a peace officer may arrest the respondent without a warrant and take the respondent into custody if the peace officer has probable cause to believe the respondent has violated an order issued under this section.

SECTION 2. AMENDMENT. Subsection 3 of section 14-07.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~At~~ Unless otherwise terminated by the court, an ex parte temporary protection order remains in effect, in the court's discretion, for not more than thirty days, unless otherwise terminated by the court until an order issued under section 14-07.1-02 is served.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 138**SENATE BILL NO. 2118**

(Judiciary Committee)
(At the request of the Attorney General)

SENTENCING ALTERNATIVES

AN ACT to amend and reenact subsection 9 of section 12.1-32-02 of the North Dakota Century Code, relating to sentencing alternatives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

9. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor ~~upon successful completion of the term of imprisonment and any term of probation imposed as part of the sentence.~~ However, if an order is entered revoking a probation imposed as a part of the sentence, the person is deemed to have been convicted of a felony. This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-03.1-23.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 139

SENATE BILL NO. 2135

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

PROBATION COSTS AND FEES

AN ACT to amend and reenact section 12.1-32-07 and subsection 15 of section 54-23.3-04 of the North Dakota Century Code, relating to probation supervision costs and fees, powers and duties of the director of the department of corrections and rehabilitation, and civil collection of supervision costs and fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁹ **SECTION 1. AMENDMENT.** Section 12.1-32-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-07. (Effective for fees collected before January 1, 2001, for offenses committed before July 1, 1999) Supervision of probationer - Conditions of probation - Revocation.

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.
2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation

⁵⁹ Section 12.1-32-07 was also amended by section 3 of House Bill No. 1363, chapter 133, and section 2 of House Bill No. 1453, chapter 130.

remains subject to revocation. The court shall order supervision costs and fees of not less than thirty dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. If the offender has not paid the full amount of supervision fees and costs before completion or termination of probation, the court may issue an order, after opportunity for hearing, to determine the amount of supervision fees and costs that are unpaid. The order may be filed, transcribed, and enforced by the department of corrections and rehabilitation in the same manner as civil judgments rendered by a district court of this state.

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation.

Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
 - b. Day reporting;
 - c. Curfew;
 - d. Home confinement;
 - e. House arrest;
 - f. Electronic monitoring;
 - g. Residential halfway house; or
 - h. Intensive supervision program.
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 training that will equip the defendant for suitable employment.
 - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
 - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.
 - d. Support the defendant's dependents and meet other family responsibilities.

- e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
 - f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
 - g. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
 - h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
 - i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
 - j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
 - k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
 - l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
 - m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
 - n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
 - o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
 - p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed 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.
5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant

must be given a certificate explicitly setting forth the conditions on which the defendant is being released.

6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.
7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.
8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.

(Effective for fees collected after December 31, 2000, for offenses committed after June 30, 1999) Supervision of probationer - Conditions of probation - Revocation.

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. If an appropriate community corrections program is not reasonably available, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. The department of corrections and rehabilitation may arrange for the supervision and management of the defendant by a community corrections program selected by the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court or pursuant to a conditional release from the physical custody of a correctional facility or the department of corrections and rehabilitation.
2. The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a

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

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation.

Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
 - b. Day reporting;
 - c. Curfew;
 - d. Home confinement;
 - e. House arrest;
 - f. Electronic monitoring;
 - g. Residential halfway house; or
 - h. Intensive supervision program.
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 training that will equip the defendant for suitable employment.
 - b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
 - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.

- d. Support the defendant's dependents and meet other family responsibilities.
- e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.
- f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
- g. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
- h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.
- i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
- j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
- k. Report to a probation officer at reasonable times as directed by the court or the probation officer.
- l. Submit to a medical examination or other reasonable testing for the purpose of determining the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
- m. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
- n. Submit the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
- o. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
- p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed 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.

5. When the court imposes a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which the defendant is being released.
6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.
7. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.
8. Jurisdiction over a probationer may be transferred from the court that imposed the sentence to another court of this state with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection may exercise all powers permissible under this chapter over the defendant.

SECTION 2. AMENDMENT. Subsection 15 of section 54-23.3-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. To collect costs and fees from persons on correctional supervision for the supervision services, control devices, and programs as implemented by the department to assist in making community corrections an effective alternative to incarceration. A person on active supervision is presumed able to pay assessed fees unless the director, giving due consideration to the fiscal obligations and resources of the probationer, determines otherwise. A person with the ability to pay assessed fees who refuses to pay must be returned to the court for a judicial determination. In addition to any other remedies allowed by law, the department may enforce and collect any unpaid supervision costs and fees imposed as a condition of parole, probation, or under a program implemented under this section in a civil judgment entered by a district court of this state and may employ licensed collection agencies to enforce and collect any unpaid supervision costs and fees.

CHAPTER 140

SENATE BILL NO. 2446

(Senators G. Nelson, Christmann, Nething)
(Representatives Delmore, Koppelman, Meier)

SEXUAL OFFENDER REGISTRATION

AN ACT to create and enact a new subdivision to subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to exclusions from the definition of administrative agency; and to amend and reenact section 12.1-32-15 of the North Dakota Century Code, relating to the registration of sexual offenders and offenders against children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶⁰ **SECTION 1. AMENDMENT.** Section 12.1-32-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-15. Offenders against children and sexual offenders - Sexually violent predators - Registration requirement - Penalty.

1. As used in this section:
 - a. "A crime against a child" means a violation of chapter 12.1-16, 12.1-17, 12.1-18, 12.1-29, or subdivision a of subsection 1 or subsection 2 of section 14-09-22, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
 - b. "Department" means the department of corrections and rehabilitation.
 - c. "Mental abnormality" means a congenital or acquired condition of an individual that affects the emotional or volitional capacity of the individual in a manner that predisposes that individual to the commission of criminal sexual acts to a degree that makes the individual a menace to the health and safety of other individuals.
 - d. "Predatory" means an act directed at a stranger, or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization.
 - e. "Sexual offender" means a person who has pled guilty to or been found guilty of a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, or subsection 2 of section 12.1-22-03.1, or an equivalent ordinance, or an attempt to commit these offenses.

⁶⁰ Section 12.1-32-15 was also amended by section 8 of Senate Bill No. 2035, chapter 134.

- f. "Sexually dangerous individual" means an individual who meets the definition specified in section 25-03.3-01.
 - g. "Temporarily domiciled" means staying or being physically present at a location for longer than ten days, attending school for longer than ten days, or maintaining employment in the jurisdiction for longer than ten days, regardless of the state of the residence.
2. The court shall impose, in addition to any penalty provided by law, a requirement that the individual register, within ten days of coming into a county in which the individual resides or is temporarily domiciled. The individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city. The court shall require an individual to register by stating this requirement on the court records, if that individual:
- a. Has pled guilty or nolo contendere to, or been found guilty as a felonious sexual offender or an attempted felonious sexual offender, including juvenile delinquent adjudications of equivalent offenses unless the offense is listed in subdivision c.
 - b. Has pled guilty or nolo contendere to, or been found guilty as a sexual offender for a misdemeanor or attempted misdemeanor. The court may deviate from requiring an individual to register if the court first finds the individual is no more than three years older than the victim if the victim is a minor, the individual has not previously been convicted as a sexual offender or of a felony crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - c. Is a juvenile found delinquent under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03, or as a sexual offender for a misdemeanor. The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a felony crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - d. Has pled guilty or nolo contendere to, or been found guilty of, a felony crime against a child or an attempted felony crime against a child, including juvenile delinquent adjudications of equivalent offenses. Except if the offense is described in section 12.1-29-02, or section 12.1-18-01 or 12.1-18-02 and the person is not the parent of the victim, the court may deviate from requiring an individual to register if the court first finds the individual has not previously been convicted as a sexual offender or for a felony crime against a child, and the individual did not exhibit mental abnormality or predatory conduct in the commission of the offense.
 - e. Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court finds the individual demonstrated mental abnormality or sexual predatory conduct in the commission of the offense and therefore orders registration for the individual. If the court orders an individual to

register as an offender under this section, the individual shall comply with all of the registration requirements in this chapter.

3. If a court has not ordered an individual to register in this state, the individual shall register if the individual:
 - a. Is incarcerated or is on probation or parole ~~on August 4~~ 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 felonious crime against a child or as a sexual offender for which registration is mandatory under this section if the conviction occurred ~~within ten years prior to August 4, 1995~~ after July 31, 1985.
4. In its consideration of mental abnormality or predatory conduct, the court shall consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing. Except as provided under subdivision e of subsection 2, the court shall state on the record in open court its affirmative finding for not requiring an offender to register.
5. When an individual is required to register under this section, the official in charge of a facility or institution where the individual required to register is confined, or the department, shall, before the discharge, parole, or release of that individual, inform the individual of the duty to register pursuant to this section. The official or the department shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register has been explained to that individual. The official in charge of the place of confinement, or the department, shall obtain the address where the individual expects to reside, attend school, or work upon discharge, parole, or release and shall report the address to the attorney general. The official in charge of the place of confinement, or the department, shall give three copies of the form to the individual and shall send three copies to the attorney general no later than forty-five days before the scheduled release of that individual. The attorney general shall forward one copy to the law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release, one copy to the prosecutor who prosecuted the individual, and one copy to the court in which the individual was prosecuted. All forms must be transmitted and received by the law

enforcement agency, prosecutor, and court thirty days before the discharge, parole, or release of the individual.

6. An individual who is required to register pursuant to this section who is released on probation or discharged upon payment of a fine must, before the release or discharge, be informed of the duty to register under this section by the court in which that individual is convicted. The court shall require the individual to read and sign a form as required by the attorney general, stating that the duty of the individual to register under this section has been explained to that individual. The court shall obtain the address where the individual expects to reside, attend school, or work upon release or discharge and shall report the address to the attorney general within three days. The court shall give one copy of the form to the individual and shall send two copies to the attorney general. The attorney general shall forward one copy to the appropriate law enforcement agency having jurisdiction where the individual expects to reside, attend school, or work upon discharge, parole, or release.
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 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.
8. An individual required to register under this section shall comply with the registration requirement for the longer of the following periods:
 - a. A period of ten years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later; or
 - b. For the life of the individual, if that individual:
 - (1) On two or more occasions has pled guilty or nolo contendere to, or been found guilty of, an offense in which that individual was ordered by a court or otherwise required to register as a felonious sexual offender or felonious offender against a child under this section;

- (2) Pleads guilty or nolo contendere to, or is found guilty of, an offense committed after August 1, 1999, which is described in subdivision a of subsection 1 of section 12.1-20-03, section 12.1-20-03.1, or subdivision d of subsection 1 of section 12.1-20-03 if the person is an adult and the victim is under age twelve, or section 12.1-18-01 if that individual is an adult other than a parent of the victim; or
 - (3) Has been civilly committed as a sexually dangerous individual under chapter 25-03.3, under the laws of another state, or by the federal government.
9. An individual required to register under this section who violates this section is guilty of a class A misdemeanor. A court may not relieve an individual, other than a juvenile, who ~~willfully~~ violates this section from serving a term of at least ninety days in jail and completing probation of one year. An individual who violates this section who previously has pled guilty or been found guilty of violating this section is guilty of a class C felony.
10. When an individual is released on parole or probation and is required to register pursuant to this section, but fails to do so within the time prescribed, the court shall order the probation, or the parole board shall order the parole, of the individual revoked. ~~The statements, photographs, and fingerprints required by this section are open to inspection by the public.~~
11. If an individual required to register pursuant to this section is temporarily sent outside the facility or institution where that individual is confined under conviction or sentence, the local law enforcement agency having jurisdiction over the place where that individual is being sent must be notified within a reasonable time period before that individual is released from the facility or institution. This subsection does not apply to any individual temporarily released under guard from the facility or institution in which that individual is confined.
12. The attorney general, with the assistance of the department and the juvenile courts, shall develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk, moderate risk, or high-risk level being assigned to each offender as follows:
 - a. The department shall conduct a risk assessment of sexual offenders who are incarcerated in institutions under the control of the department and sexual offenders who are on supervised probation. The department, in a timely manner, shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning individuals required to be registered under this section who are about to be released or placed into the community.
 - b. The attorney general shall conduct a risk assessment of sexual offenders who are not under the custody or supervision of the department. The attorney general may adopt a law enforcement agency's previous assignment of risk level for an individual if the assessment was conducted in a manner substantially similar to the guidelines developed under this subsection.

- c. The juvenile courts or the agency having legal custody of a juvenile shall conduct a risk assessment of juvenile sex offenders who are required to register under this section. The juvenile courts or the agency having legal custody of a juvenile shall provide the attorney general any information, including the offender's level of risk and supporting documentation, concerning juveniles required to register and who are about to be released or placed into the community.
- d. The agency responsible for conducting the risk assessment shall notify the offender as to the level of risk assigned. An offender may request a review of that determination with the appropriate agency and may present any information that the offender believes may lower the assigned risk level.
13. Relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency if the individual is a moderate or high risk and the agency determines that the individual registered under this section is a public risk and disclosure of the conviction and registration information is necessary for public protection. The department, in a timely manner, shall provide law enforcement agencies any information the department determines is relevant concerning individuals required to be registered under this section who are about to be released or placed into the community. A state officer, law enforcement agency, or school district, and an appointee, officer, or employee of these entities are not subject to civil or criminal liability for making risk determinations or for disclosing or for failing to disclose information as permitted by this section. Nonregistration information concerning an offender required to register under this section consisting of the name of the offender, the last known address of the offender, the offense or offenses as defined in subsection 4 to which the offender pled guilty or of which the offender was found guilty, the date of the judgment or order imposing a sentence or probation and the court entering the judgment or order, the sentence or probation imposed upon the offender, and any disposition, if known, of a sentence or probation may be disclosed to the public. The attorney general shall compile nonregistration information concerning offenders required to register under this section from criminal history record information maintained pursuant to chapter 42-60 or from an agency or department of another state or the federal government and shall provide the information upon request at no cost. The attorney general shall develop guidelines for public disclosure of offender registration information. Public disclosure may include internet access if the offender:
- a. Is required to register for a lifetime under subsection 8;
- b. Has been determined to be a high risk to the public by the department, the attorney general, or the courts, according to guidelines developed by those agencies; or
- c. Has been determined to be a high risk to the public by an agency of another state or the federal government.

If the offender has been determined to be a moderate risk, public disclosure must include at a minimum, notification to the victim of the

offense and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender. Upon request, law enforcement agencies may release conviction and registration information regarding low-risk, moderate-risk, or high-risk offenders.

14. A state officer, law enforcement agency, or school district, or any appointee, officer, or employee of those entities is not subject to civil or criminal liability for making risk determinations or for disclosing or for failing to disclose information as permitted by this section.
- ~~43.~~ 15. If a juvenile is adjudicated delinquent and required or ordered to register as a sexual offender or as an offender against a child under this section, the juvenile shall comply with the registration requirements in this section. Notwithstanding any other provision of law, a law enforcement agency shall register a juvenile offender in the same manner as adult offenders and may release any relevant and necessary information on file to other law enforcement agencies, the department of human services, the superintendent or principal of the school the juvenile attends, or the public if disclosure is necessary to protect public health or safety. The school administration may notify others in similar positions if the juvenile transfers to another learning institution in or outside the state.
44. 16. If an individual has been required to register as a sexual offender or an offender against a child under section 12.1-32-15 or 27-20-52.1 before August 1, 1999, the individual may petition the court to be removed from the offender list if registration is no longer mandatory for that individual. In considering the petition, the court shall comply with the requirements of this section.

⁶¹ **SECTION 2.** A new subdivision to subsection 2 of section 28-32-01 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

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.

Approved April 12, 2001
Filed April 12, 2001

⁶¹ Section 28-32-01 was created by section 12 of House Bill No. 1030, chapter 293, and amended by section 18 of Senate Bill No. 2032, chapter 488, and section 4 of Senate Bill No. 2251, chapter 501.

CHAPTER 141

HOUSE BILL NO. 1270

(Representatives DeKrey, Koppelman, Warner)
(Senator Lyson)

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

AN ACT to provide for an interstate compact for adult offender supervision; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Compact for adult offender supervision. The interstate compact for adult offender supervision is entered with all jurisdictions legally joining the compact in the form substantially as follows:

Article 1. Purpose

1. The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner and, when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that the United States Congress, by enacting 4 U.S.C. 112 [Pub. L. No. 89-554; 80 Stat. 608], has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.
2. It is the purpose of this compact and the interstate commission created under this compact, through means of joint and cooperative action among the compacting states:
 - a. To provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community;
 - b. To provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and
 - c. To equitably distribute the costs, benefits, and obligations of the compact among the compacting states.
3. In addition, this compact is intended to:
 - a. Create an interstate commission that will establish uniform procedures to manage the movement between states of offenders placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities or

- corrections or other criminal justice agencies that will promulgate rules to achieve the purpose of this compact;
- b. Ensure an opportunity for comment and time notice to victims and to jurisdictions where offenders are authorized to travel or to relocate across state lines;
 - c. Establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials and regular reporting of compact activities to the heads of state councils, the state executive, judicial, and legislative branches, and the criminal justice administrators;
 - d. Monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and
 - e. Coordinate training and education on the regulation of interstate movement of offenders for officials involved in that activity.
4. The compacting states recognize that there is no right of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision, subject to this compact and the bylaws and rules promulgated under this compact. It is the policy of the compacting states that the activities conducted by the interstate commission are intended to formulate public policy and are therefore public business.

Article 2. Definitions

As used in this compact, unless the context otherwise requires:

1. "Adult" means a person who is eighteen years of age or older or a person under eighteen years of age who is legally classified, either by statute or court order, as an adult.
2. "Bylaws" means those bylaws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct.
3. "Commissioner" means the voting representative of each compacting state appointed pursuant to article 3 of this compact.
4. "Compact administrator" means the individual in each compacting state appointed under the terms of this compact 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.
5. "Compacting state" means any state that has enacted the enabling legislation for this compact.
6. "Interstate commission" means the interstate commission for adult offender supervision created by article 3 of this compact.

7. "Member" means the commissioner of a compacting state or the commissioner's designee who is an individual officially connected with the commissioner.
8. "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.
9. "Offender" means an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, or corrections or other criminal justice agencies.
10. "Person" means any individual or public or private legal entity.
11. "Rules" means acts of the interstate commission, adopted pursuant to article 8 of this compact and substantially affecting interested parties in addition to the interstate commission, which have the force and effect of law in the compacting states.
12. "State" means a state of the United States, the District of Columbia, or any territorial possession of the United States.
13. "State council" means the resident members of the state council for interstate adult offender supervision created by each state under article 4 of this compact.

Article 3. Interstate Commission for Adult Offender Supervision

1. The compacting states hereby create the interstate commission for adult offender supervision. The interstate commission is a body corporate and joint agency of the compacting states. The interstate commission has all the responsibilities, powers, and duties set forth in this compact, including the power to sue and be sued and any additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with this compact.
2. The interstate commission consists of commissioners selected and appointed by each state. 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.
3. Each compacting state represented at any meeting of the interstate 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 interstate commission.
4. The interstate commission shall meet at least once each calendar year. The chairman may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings.

Public notice must be given of all meetings and meetings are open to the public, except as provided in article 7 of this compact.

5. The interstate commission shall establish an executive committee that includes commission officers, members, and others as determined by the bylaws. The executive committee has the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff, administers enforcement and compliance with the provisions of the compact, its bylaws and rules and as directed by the interstate commission and performs other duties as directed by the interstate commission or as set forth in the bylaws and rules.

Article 4. 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 interstate commission.
2. The North Dakota state council for interstate adult offender 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, the president of the senate, and the speaker of the house of representatives shall each appoint one member.
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 interstate 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 5. Powers and Duties of the Interstate Commission

The interstate commission has the following powers:

1. To adopt suitable bylaws governing the management and operation of the interstate commission.
2. To adopt rules that 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 offenders subject to the terms of this compact and any bylaws and rules adopted by the interstate commission.
4. To enforce compliance with the compact and the rules and bylaws of the interstate commission, using all necessary and proper means, including the use of judicial process.
5. To establish and maintain offices.
6. To purchase and maintain insurance and bonds.
7. To borrow, accept, or contract for the services of personnel, including members and their staffs.
8. To establish and appoint committees and hire staff it deems necessary to carry out its functions, including an executive committee as required by article 3 of this compact, which has the power to act on behalf of the interstate 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 interstate commission's personnel policies and programs relating to, among other things, 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 any property, 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 10 of this compact.
14. To sue and be sued.
15. To provide for dispute resolution among compacting states.
16. To perform 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 interstate commission during the preceding year. Reports must also include any recommendations that may have been adopted by the interstate commission.
18. To coordinate education, training, and public awareness regarding the interstate movement of offenders for officials involved in such activity.

19. To establish uniform standards for the reporting, collecting, and exchanging of data.

Article 6. Organization and Operation of the Interstate Commission

1. The interstate commission, by a majority of the members within twelve months of the first interstate commission meeting, shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the compact, including:
 - a. Establishing the fiscal year of the interstate commission.
 - b. Establishing an executive committee and other committees as may be necessary.
 - c. Providing reasonable standards and procedures for establishing committees and 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 interstate commission and ensuring reasonable notice of each meeting.
 - e. Establishing the titles and responsibilities of the officers of the interstate commission.
 - f. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service laws or other similar laws of any compacting state, the bylaws exclusively govern the personnel policies and programs of the interstate commission.
 - g. Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of the interstate commission's debts and obligations.
 - h. Providing transition rules for startup administration of the compact.
 - i. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.
2. a. The interstate commission, by a majority of the members, shall elect from among its members a chairman and 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 interstate commission. The officers so elected serve without compensation or remuneration from the interstate commission, provided that, subject to the availability of budgeted funds, the officers are reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

3. Each member of the interstate commission has the right and power 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 must vote in person on behalf of the compacting state and may not delegate a vote to another compacting state. However, the director of the department of corrections and rehabilitation may designate another individual, in the absence of the director, to cast a vote on behalf of the director at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone or other means of telecommunication or electronic communication is subject to the same quorum requirements of meetings where members are present in person.
4. The interstate commission's bylaws must establish conditions and procedures under which the interstate commission makes its information and official records available to the public for inspection or copying. The interstate 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. In adopting rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.
5. Public notice must be given of all meetings and all meetings must be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall adopt rules consistent with the principles contained in the Government in the Sunshine Act [Pub. L. 104-231; 110 Stat. 3049; 5 U.S.C. 552]. The interstate commission and any of its committees may close a meeting to the public when the interstate commission determines by two-thirds vote that an open meeting would be likely to:
 - a. Relate solely to the interstate 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 when the disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - f. Disclose investigatory 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 interstate commission with respect to a regulated entity for the purpose of regulation or supervision of the entity;
- h. Disclose information when the premature disclosure would significantly endanger the life of a person or the stability of a regulated entity; or
 - i. Specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or proceeding.
6. For every meeting closed pursuant to subsection 5, the interstate commission's chief legal officer shall publicly certify that, in the officer's opinion, the meeting may be closed to the public and shall make reference to each relevant provision authorizing closure of the meeting. The interstate 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 action 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.
 7. The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules that specify the data to be collected, the means of collection and data exchange, and reporting requirements.

Article 8. Rulemaking Functions of the Interstate Commission

1. The interstate commission shall adopt rules in order to effectively and efficiently achieve the purposes of the compact, including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.
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 Federal Administrative Procedure Act [Pub. L. 103-272; 108 Stat. 1373; 5 U.S.C. 551 et seq.] and the Federal Advisory Committee Act [5 U.S.C. Appendix 2, section 1 et seq.]. All rules and amendments become binding as of the date specified in each rule or amendment.
3. If a majority of the legislatures of the compacting states reject a rule, by enactment of a statute or adoption of a resolution in the same manner used to adopt the compact, the rule has no further force and effect in any compacting state.
4. When adopting a rule, the interstate commission shall:
 - a. Publish the proposed rule, stating with particularity the text of the rule that is proposed and the reason for the proposed rule;
 - b. Allow persons to submit written data, facts, opinions and arguments, which information must be publicly available;
 - c. Provide an opportunity for an informal hearing; and

- d. Adopt a final rule and its effective date, if appropriate, based on the rulemaking record. 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 interstate commission's principal office is located for judicial review of the rule. If the court finds that the interstate 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 subdivision, evidence is substantial if it would be considered substantial evidence under the Federal Administrative Procedure Act [Pub. L. 103-272; 108 Stat. 1373; 5 U.S.C. 551 et seq.] and the Federal Advisory Committee Act [5 U.S.C. Appendix 2, section 1 et seq.].
5. Rules related to the following subjects must be addressed within twelve months after the first meeting of the interstate commission:
 - a. Notice to victims and opportunity to be heard;
 - b. Offender registration and compliance;
 - c. Violations and returns;
 - d. Transfer procedures and forms;
 - e. Eligibility for transfer;
 - f. Collection of restitution and fees from offenders;
 - g. Data collection and reporting;
 - h. Level of supervision to be provided by the receiving state;
 - i. Transition rules governing the operation of the compact and the interstate commission during the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and
 - j. Mediation, arbitration, and dispute resolution.
6. The existing rules governing the operation of the previous compact superseded by this compact are void twelve months after the first meeting of the interstate commission created under this compact.
7. Upon determination by the interstate commission that an emergency exists, the interstate 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 rule.

Article 9. Oversight, Enforcement, and Dispute Resolution by the Interstate Commission

1. a. The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor those

activities being administered in noncompacting states which may significantly affect compacting states.

- b. 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. 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 interstate commission is entitled to receive all service of process in any such proceeding and has standing to intervene in the proceeding for all purposes.
2. a. The compacting states shall report to the interstate commission on issues or activities of concern to them and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

b. The interstate commission shall attempt to resolve any dispute or other issues that are subject to the compact and which may arise among compacting states and noncompacting states. The interstate commission shall adopt a bylaw or rule providing for both mediation and binding dispute resolution for disputes among the compacting states.
3. The interstate commission, in the reasonable exercise of its discretion, shall enforce this compact using any or all means set forth in subsection 2 of article 12 of this compact.

Article 10. Finance

1. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.
2. The interstate 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 interstate commission and its staff, which must be in a total amount sufficient to cover the interstate 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 interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state. The interstate commission shall adopt a rule binding upon all compacting states which governs the assessment.
3. The interstate commission may not incur any obligation of any kind before securing the funds adequate to meet the obligation, nor may the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.
4. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements

of funds handled by the interstate 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 interstate commission.

5. a. The interstate compact for adult offender supervision fund is established as a special fund in the state treasury. The fund consists of moneys appropriated for the purpose of meeting financial obligations imposed on the state as a result of the state's participation in this compact.
- b. An assessment levied or any other financial obligation imposed under this compact is effective against the state only to the extent that moneys to pay the assessment or meet the financial obligation have been appropriated and deposited in the fund established in subdivision a of this subsection.

Article 11. 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 thirty-five or more of states. The initial effective date is the later of August 1, 2001, or upon enactment into law by the thirty-fifth state. 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 noncompacting states or their designees may be invited to participate in interstate commission activities on a nonvoting basis before adoption of the compact by all states.
3. Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment becomes effective and binding upon the interstate commission and the compacting states until it is enacted into law by unanimous consent of the compacting states.

Article 12. Withdrawal, Default, Termination, and Judicial Enforcement

1. a. Once effective, the compact continues in force and remains binding upon every compacting state, but a compacting state may withdraw from the compact by repealing the statute resolution that enacted the compact into law. The effective date of withdrawal is the effective date of the repeal.
- b. The withdrawing state shall notify the chairman of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of receipt of the notice.
- c. The withdrawing state is responsible for all assessments, obligations, and liabilities of that state incurred through the effective date of withdrawal, including any obligations, the

- performance of which extend beyond the effective date of withdrawal.
- d. 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. a. If the interstate 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 interstate commission, the interstate commission may impose any one or more of the following penalties:
 - (1) Fines, fees, and costs in amounts as are deemed to be reasonable as fixed by the interstate commission.
 - (2) Remedial training and technical assistance as directed by the interstate commission.
 - (3) Suspension and termination of membership in the compact. Suspension may be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension must be given by the interstate commission to the governor, the chief justice, or chief judicial officer of the defaulting state, the majority and minority leaders of the defaulting state's legislative assembly, and the state council.
 - b. The grounds for default include failure of a compacting state to perform obligations or responsibilities imposed upon it by this compact or the interstate commission bylaws or rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate 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 interstate commission, in addition to any other penalties imposed, the defaulting state may 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 suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice, or chief judicial officer of the defaulting state, the majority and minority leaders of the defaulting state's legislative assembly, and the state council of the termination.
 - c. The defaulting state is responsible for all assessments, obligations, and liabilities of that state incurred through the effective date of termination, including any obligations, the performance of which extend beyond the effective date of termination.
 - d. The interstate commission does not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate 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 interstate commission pursuant to the rules.

3. The interstate 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 interstate commission, in the federal district court where the interstate commission has its principal office to enforce compliance with the compact, its rules, or bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorney fees.
4.
 - a. 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.
 - b. Upon the dissolution of this compact, the compact becomes void and the business and affairs of the interstate commission must be concluded and any surplus funds must be distributed in accordance with the bylaws.

Article 13. Binding Effect of Compact and Other Laws

1.
 - a. This compact does not prevent the enforcement of any other law of a compacting state which is consistent with this compact.
 - b. The laws of the state, other than the Constitution of North Dakota, which conflict with this compact are superseded to the extent of the conflict.
2.
 - a. All lawful actions of the interstate commission, including all rules and bylaws adopted by the interstate commission, are binding upon the state unless contrary to the Constitution of North Dakota.
 - b. All agreements between the interstate commission and the compacting states are binding in accordance with their terms.
 - c. Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding the meaning or interpretation.
 - d. In the event any provision of this compact exceeds the constitutional limits imposed on the legislative assembly of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by the provision upon the interstate 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.
3. The state is bound by the bylaws and rules adopted under this compact only to the extent that the operation of the bylaws and rules does not impose an obligation exceeding any limitation on state power or

authority contained in the Constitution of North Dakota as interpreted by the courts of this state.

SECTION 2. EXPIRATION DATE. This Act is effective through August 1, 2003, and after that date is ineffective.

Approved April 5, 2001

Filed April 5, 2001

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 142

HOUSE BILL NO. 1081

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

MONEY BROKER LICENSES

AN ACT to amend and reenact section 13-04.1-02 of the North Dakota Century Code, relating to money broker licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-04.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13-04.1-02. Money broker license required. Except as otherwise herein provided, a person other than a money broker licensed and authorized under this chapter may not provide loans, ~~consumer~~ or leases as a form of financing, or advertise, or solicit either in print, by letter, in person, or otherwise in North Dakota, the right to find lenders or provide loans or ~~consumer~~ leases for persons or businesses desirous of obtaining funds for any purposes. As used in this chapter, the term "money broker" does not include banks, credit unions, savings and loan associations, insurance companies, small loan companies, consumer finance companies, state or federal agencies and their employees, institutions chartered by the farm credit administration, trust companies, or any other person or business regulated and licensed by the state of North Dakota. The term "money broker" also does not include a real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson. The term "money broker" also does not include any persons, retail sellers, or manufacturers providing lease financing for their own property or inventory held as a normal course of business, or to leases on any real property.

Approved March 6, 2001

Filed March 6, 2001

CHAPTER 143

HOUSE BILL NO. 1273

(Representatives Carlisle, Keiser, Kliniske)
(Senators G. Nelson, Stenehjem, Wardner)

DEFERRED PRESENTMENT SERVICE PROVIDER LICENSING

AN ACT to create and enact a new chapter to title 13 of the North Dakota Century Code, relating to the licensing of deferred presentment service providers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 13 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Check" means a personal check signed by the maker and made payable to a licensee.
2. "Commissioner" means the commissioner of banking and financial institutions.
3. "Completed deferred presentment service transaction" means a transaction that is completed when a check is redeemed by the maker by payment in full to the licensee in cash, money order, or certified check or by negotiation or deposit by the licensee.
4. "Deferred presentment service transaction" means a transaction made under a written agreement between a licensee and the maker of a check under which the licensee (a) pays to the maker of the check the amount of the check, less the fees permitted under this chapter, and accepts a check from the maker dated on the date of the transaction and agrees to hold the check for a period of time before negotiation or presentment or (b) accepts a check dated after the date of the transaction and agrees to hold the check for deposit until the date written on the check.
5. "Licensee" means a person licensed under this chapter to provide deferred presentment services.

License requirements. A person may not engage in the business of deferred presentment service without a license issued under this chapter. A separate license is required for each location from which the business of deferred presentment service is conducted.

Qualifications for license. To qualify for a license, an applicant shall satisfy the following requirements:

1. Each applicant shall maintain unencumbered assets of at least twenty-five thousand dollars per licensed location, determined in accordance with generally accepted accounting principles.
2. The financial responsibility, financial condition, business experience, character, and general fitness of the applicant 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 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.
3. Each applicant shall establish that neither the applicant nor any principal of the applicant has been convicted of a felony. A deferred sentence or federal pretrial diversion must be considered a conviction for purposes of this section.
4. Each applicant shall maintain a bond issued by a surety company authorized to do business in this state, in the amount of twenty thousand dollars, and the commissioner may require a larger bond if the commissioner determines the larger bond is necessary based on the volume of the applicant's business.

Application for license. Each application for a license must be in the form prescribed by the commissioner and must include:

1. The legal name of the applicant, residence of the applicant, business address of the applicant, and address at which deferred presentment service is provided if different from the business address and, if the applicant is a partnership, association, or corporation, the name and address of every member, officer, and director;
2. The location at which the registered office of the applicant is located; and
3. Other data and information the commissioner may require with respect to the applicant and the applicant's directors, officers, members, and shareholders.

Application fees - Financial statements - Annual fee - Deposit of fees. Each applicant for licensure shall include with the application an application and background investigation fee of eight hundred fifty dollars, which is not subject to refund but which, if the license is granted, constitutes the license fee for the first license year or part of the first license year, and each applicant for licensure shall include with the application proof of the required surety bond. The annual license fee is four hundred fifty dollars. Each fee set forth in this section is applicable to each location. The commissioner shall deposit fees and costs collected by the commissioner under this chapter in the department of banking and financial institutions regulatory fund.

Issuance of license - Posting.

1. Upon receipt of a complete application, the commissioner shall determine whether the qualifications prescribed under this chapter are

satisfied. If the commissioner determines the qualifications are satisfied and approves the documents, the commissioner shall issue to the applicant a license to engage in the deferred presentment service business.

2. A licensee shall keep the license conspicuously posted in the place of business of the licensee.
3. A license issued under this section is effective through the remainder of the fiscal year ending June thirtieth after the license's date of issuance unless earlier surrendered, suspended, or revoked under this chapter.

Nontransferability - Change in control of license. A license issued under this chapter is not transferable or assignable. The prior written approval of the commissioner is required for the continued operation of a deferred presentment service business if a change in control of a licensee occurs. Control in the case of a corporation means direct or indirect ownership; the right to control twenty-five percent or more of the voting shares of the corporation; or the ability of any person to elect a majority of the directors or otherwise affect a change in policy. Control in the case of any other entity means the ability to exchange the principals of the organization, whether active or passive. In the case of a change of control request, the commissioner may require information the commissioner deems necessary to determine whether a new application is required. A licensee shall notify the commissioner fifteen days before any proposed change in the licensee's business location or name.

Reports of commissioner. Within fifteen days of the occurrence of any one of the following events, a licensee shall file a written report with the commissioner describing the event and the event's expected impact on the activities of the licensee in the state:

1. The filing for bankruptcy or reorganization by the licensee;
2. The institution of revocation or suspension proceedings against the licensee by any governmental authority;
3. Any felony charges of the licensee or any of the licensee's members, directors, officers, or shareholders; and
4. Any other event the commissioner identifies by rule.

Expiration of license - Renewal. Licenses issued under this chapter expire as of July first of each year. A license may be renewed for the ensuing twelve-month period upon application by the licensee establishing continued compliance with the requirements of this chapter and the payment to the commissioner of the annual license fee before July first of each year.

Regulations - Examinations. The commissioner may adopt rules for the implementation and enforcement of this chapter. A copy of a rule adopted by the commissioner must be mailed to each licensee at least thirty days before the date the rule takes effect. To assure compliance with this chapter, the commissioner may examine the relevant business, books, and records of any licensee. The licensee shall pay an examination or visitation fee, and the commissioner shall charge the licensee for the actual cost of the examination or visitation at an hourly rate set by the commissioner which is sufficient to cover all reasonable expenses associated with the examination or visitation.

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.

Fees for service - Deferred presentment service transaction procedures.

1. Before disbursing funds under a deferred presentment service transaction, a licensee shall provide to the maker of the check a clear and conspicuous printed notice indicating:
 - a. That a deferred presentment service transaction is not intended to meet long-term financial needs.
 - b. That the maker of a check should use a deferred presentment service transaction only to meet short-term cash needs.
 - c. That the maker of a check will be required to pay additional fees if the deferred presentment service transaction is renewed rather than paid in full when due. If the transaction is renewed, any amount paid in excess of the fee applies to the payoff amount.
 - d. A schedule of fees charged for deferred presentment service.
 - e. Any information required under federal law.
 - f. No property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process.
2. A licensee may charge a fee for the deferred presentment service, not to exceed twenty percent of the amount paid to the maker of the check by the licensee. This fee may not be deemed interest for any purpose of law. No other fee or charge may be charged for the deferred presentment service, and no property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process.
3. A licensee may not disburse more than five hundred dollars to the maker of a check in a deferred presentment service transaction.
4. A licensee may not engage in a deferred presentment service transaction with a customer who has an aggregate face value of all outstanding checks from any one maker exceeding five hundred dollars which is payable to the same or any other licensee. A licensee may not enter into a new deferred presentment service transaction with a customer within three business days of that customer's completion of a previous deferred presentment service transaction. A licensee may rely on a written representation of a maker regarding the existence of any outstanding checks for deferred presentment held by a licensee other than the licensee receiving the representation. However, if a licensee

has multiple locations, that licensee may not rely on such written representation of a maker regarding the existence of any outstanding checks for deferred presentment held by that licensee, or one of the licensee's multiple locations, unless the licensee and the licensee's multiple locations use a point of sale registry or some other accounting system to attempt to prevent violations of this subsection.

5. Before a licensee may negotiate or present a check for payment, the check must be endorsed with the actual name under which the licensee is doing business.
6. Each deferred presentment service transaction, including a renewal, must be documented by a written agreement signed by the maker of the check. The written agreement must contain the name of the licensee; the transaction date; the amount of the check; and a statement of the total amount of fees charged, expressed as a dollar amount and as an annual percentage rate. The written agreement must authorize the licensee to defer presentment or negotiation of the check until a specified date. The maker of a check may redeem the check from the licensee at any time before the negotiation or presentment of the check by making payment to the licensee; however, the maker may rescind the transaction by the close of the following business day at no cost.
7. If a check is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or a stop payment order, the licensee has the right to all civil remedies available to collect the check. The licensee may contract for and collect a returned check charge not to exceed twenty dollars per customer, per year. No other fee or charge may be collected as a result of a returned check or as a result of default by the maker of the check in timely payment to the licensee.
8. A maker of a check who has authority to make the check and enters into a deferred presentment service agreement is not subject to a criminal penalty relating to the check or the deferred presentment service agreement unless the account on which the check was written was closed on the original date of the transaction. At the time of entering a transaction, a licensee shall verify that the account on which the check is written is open. A licensee may not pursue or threaten to pursue criminal penalties against a maker of a check for criminal penalties prohibited by this subsection.
9. A licensee may not engage in unfair or deceptive acts, practices, or advertising in the conduct of a deferred presentment service business.
10. The amount paid to the maker by the licensee in a deferred presentment service transaction must be paid in the form of cash or check.
11. Each licensee must conspicuously post in the licensee's licensed location a notice of the fees imposed for the deferred presentment service.
12. A licensee may not renew a deferred presentment service transaction more than once. A licensee's renewal fee may not exceed twenty percent of the amount being renewed. The total period of deferral, including the initial deferral and one renewal, may not exceed forty-five days. An individual renewal period may not be less than fifteen days.

After forty-five days the renewed deferred presentment check must be paid off in cash, money order, or certified check by the maker or must be deposited by the licensee.

13. A licensee may not renew, repay, refinance, or consolidate a deferred presentment service transaction with the proceeds of another deferred presentment service transaction with that licensee by the same maker or customer. It is presumed that a deferred presentment service transaction initiated within three business days before completion of a deferred presentment service transaction is a violation of this subsection.
14. A licensee may not conduct another business, other than a bona fide pawnbroking business, within the same office, suite, room, or place of business at which the licensee engages in deferred presentment service transactions unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of consumers.
15. A licensee shall provide a notice in a prominent place on each deferred presentment service agreement in no less than ten-point type in substantially the following form:

State law prohibits this business from allowing customers to have outstanding at any one time, deferred presentment service transactions totaling more than five hundred dollars.

16. A licensee or any agent of a licensee who willfully violates this section is guilty of a class A misdemeanor.

Denial of license - Hearing. If the commissioner determines an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing stating that the application is denied and stating the basis for denial. If the commissioner denies an application, or if the commissioner fails to act on an application within thirty days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted. The hearing must be held within thirty days after receipt of the written demand by the applicant. In the event of a hearing, the commissioner shall reconsider the application and, after hearing, issue a written order granting or denying the application. If an applicant who is denied a license requests a hearing and the commissioner's denial is upheld, the commissioner may assess the applicant for the commissioner's costs incurred for the hearing, in an amount not exceeding two thousand dollars.

Suspension - Revocation.

1. After notice and hearing, the commissioner may suspend or revoke a license if the commissioner finds that the licensee or any principal of the licensee has been convicted of a felony or that the licensee knowingly or through lack of due care:
 - a. Failed to pay the annual license fee imposed under this chapter or any examination fee imposed by the commissioner under the authority of this chapter;

- b. Committed any fraud, engaged in any dishonest activities, or made any misrepresentations;
 - c. Violated this chapter or any rule adopted under this chapter or violated any other law in the course of the licensee's business activities as a licensee;
 - d. Made false statements in the application for the license; or
 - e. Engaged in any unfair or deceptive acts, practices, or advertising in the conduct of a deferred presentment service business.
2. Written notice must be given at least twenty days before the date of a hearing under this chapter.

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.

Approved April 19, 2001
Filed April 19, 2001

DOMESTIC RELATIONS AND PERSONS

CHAPTER 144

SENATE BILL NO. 2361

(Senators Krauter, Erbele, T. Mathern)
(Representatives Boehm, Hunskor, Lemieux)

PREGNANCY, CHILDBIRTH, AND ADOPTION INFORMATION

AN ACT to amend and reenact section 14-02.1-02.1 of the North Dakota Century Code, relating to information provided by the state department of health regarding pregnancy, childbirth, and adoption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶² **SECTION 1. AMENDMENT.** Section 14-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

14-02.1-02.1. Printed information - Referral service.

1. The state department of health shall ~~cause to be published~~ publish in English, and in every other language that the department determines is the primary language of a significant number of state residents, ~~within one hundred eighty days after July 1, 1991,~~ the following easily comprehensible printed materials:
 - a. Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies. The materials must include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials including a toll-free, twenty-four hour a day telephone number that may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer.
 - b. Materials designed to inform the woman of the probable anatomical and physiological characteristics of the fetus at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the survival of the fetus and pictures representing the development of a fetus at two-week

⁶² Section 14-02.1-02.1 was also amended by section 10 of Senate Bill No. 2004, chapter 29.

gestational increments. The pictures must contain the dimensions of the fetus and must be realistic and appropriate for the stage of pregnancy depicted. The materials must be objective, nonjudgmental, and designed to convey only accurate scientific information about the fetus at the various gestational ages. The materials required under this subsection must be reviewed, updated, and reprinted as needed.

2. The materials required under ~~this section~~ subsection 1 must be available at no cost from the state department of health upon request and in appropriate number to any person, facility, or hospital, and, except for copyrighted material, must be available on the department's internet web site. The department may make the copyrighted material available on its internet web site if the department pays the copyright royalties.

Approved April 28, 2001

Filed April 28, 2001

CHAPTER 145

SENATE BILL NO. 2217

(Senators Bercier, Christenson, Lyson, T. Mathern)
(Representatives Cleary, Jensen)

DISCRIMINATORY PRACTICES

AN ACT to create and enact two new sections to chapter 14-02.4 of the North Dakota Century Code, relating to the authority of the department of labor to receive discriminatory practices complaints; to amend and reenact sections 14-02.4-02, 14-02.4-19, 14-02.4-20, 14-02.4-21, 14-02.5-02, 14-02.5-03, 14-02.5-04, 14-02.5-05, 14-02.5-07, 14-02.5-08, 14-02.5-10, and 14-02.5-45 of the North Dakota Century Code, relating to discriminatory practices and the authority of the department of labor; to repeal section 14-02.4-12.1 of the North Dakota Century Code, relating to discriminatory housing practices; to provide a penalty; and to provide for a report to the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-02 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means at least forty years of age.
2. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
3. "Department" means the division of human rights within the department of labor.
4. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of this impairment, or being regarded as having this impairment.
4. 5. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, ~~housing accommodations, property rights,~~ public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:

- a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, or education; ~~or housing~~;
 - b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
 - c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, or educational ~~or housing~~ environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.
- ~~5.~~ 6. "Employee" means a person who performs services for an employer, who employs one or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.
- ~~6.~~ 7. "Employer" means a person within the state who employs one or more employees for more than one quarter of the year and a person wherever situated who employs one or more employees whose services are to be partially or wholly performed in the state.
- ~~7.~~ 8. "Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunity to work for an employer and includes any agent of the person.
- ~~8.~~ 9. "Labor organization" means a person, employee representation committee, plan in which employees participate, or other organization which exists solely or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.
- ~~9.~~ 10. "National origin" means the place of birth of an individual or any of the individual's lineal ancestors.
- ~~40.~~ 11. "Otherwise qualified person" means a person who is capable of performing the essential functions of the particular employment in question.
- ~~44.~~ 12. "Person" means an individual, partnership, association, corporation, limited liability company, unincorporated organization, mutual company, joint stock company, trust, agent, legal representative, trustee, trustee in

bankruptcy, receiver, labor organization, public body, public corporation, and the state and a political subdivision and agency thereof.

- ~~42.~~ 13. "Public accommodation" means every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity. "Public accommodation" does not include a bona fide private club or other place, establishment, or facility which is by its nature distinctly private; provided, however, the distinctly private place, establishment, or facility is a "public accommodation" during the period it caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity.
- ~~43.~~ 14. "Public service" means a public facility, department, agency, board, or commission owned, operated, or managed by or on behalf of this state, a political subdivision thereof, or a public corporation.
- ~~44.~~ 14. "~~Real estate broker~~" and "~~real estate salesman~~" mean a ~~real estate broker and real estate salesman as defined in section 43-23-06.1.~~
- ~~45.~~ 15. "~~Real property~~" means a ~~right, title, interest in or to the possession, ownership, enjoyment, or occupancy of a parcel of land, building situated thereon, or portion of the building.~~
- ~~46.~~ 15. "Reasonable accommodations" means accommodations by an employer that do not:
- a. Unduly disrupt or interfere with the employer's normal operations;
 - b. Threaten the health or safety of the individual with a disability or others;
 - c. Contradict a business necessity of the employer; or
 - d. Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.
- ~~47.~~ 16. "Sex" includes, ~~but is not limited to,~~ pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
- ~~48.~~ 17. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

SECTION 2. Two new sections to chapter 14-02.4 of the North Dakota Century Code are created and enacted as follows:

Duties and powers of department. The department shall receive and investigate complaints alleging violations of this chapter. The department may adopt rules necessary to implement this chapter. Within the limits of legislative appropriations, the department shall foster prevention of discrimination under this chapter through education for the public, employers, providers of public accommodations or services, and commercial lenders on the rights and

responsibilities provided under this chapter and ways to respect those protected rights. The department shall emphasize conciliation to resolve complaints. The department shall publish in even-numbered years a written report recommending legislative or other action to carry out the purposes of this chapter. The department shall conduct studies relating to the nature and extent of discriminatory practices in this state.

Complaints - Probable cause - Administrative hearing.

1. The department shall investigate complaints of alleged discriminatory practices. An aggrieved person may file a complaint with the department alleging the discriminatory practice. The department may file a complaint. A complaint must be in writing and in the form prescribed by the department.
2. The department shall determine from the facts whether probable cause exists to believe that a discriminatory practice has occurred. If the department determines that no probable cause exists to believe that a discriminatory practice has occurred, the department shall promptly dismiss the complaint.
3. If the department determines that probable cause exists to believe that a discriminatory practice has occurred and is unable to resolve the complaint through informal negotiations or conciliation, the department shall provide for an administrative hearing in the manner provided in chapter 28-32 on the complaint.

SECTION 3. AMENDMENT. Section 14-02.4-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.4-19. Actions - Limitations. Any person claiming to be aggrieved by a discriminatory practice 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 any the judicial district in the state in which the unlawful practice is alleged to have been committed, or in the district in which the records relevant to such practice are maintained and administered, or in the judicial district in which the person would have worked or obtained credit obtained public accommodations or services were it not for the alleged discriminatory act within ~~three years~~ one hundred eighty days of the alleged act of wrongdoing. Any person claiming to be aggrieved by a ~~any~~ discriminatory practice other than public services or public accommodations in violation of this chapter ~~with regard to an employer's discriminatory practice~~ may ~~bring file~~ a complaint of ~~discriminating employment practices under this chapter to~~ discriminatory practice with the department of labor 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. ~~Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to public accommodations or services may bring an action in the district court in any district in the state in which the unlawful practice is alleged to have been committed, or in the judicial district in which the person would have obtained public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing.~~ The period of limitation for bringing an action in the district court is tolled while the complaint is pending with the department.

⁶³ **SECTION 4. AMENDMENT.** Section 14-02.4-20 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-20. Relief. If the department, as the result of an administrative hearing, or the court determines that the respondent has engaged in or is engaging in an unlawful a discriminatory practice, the department or the court may enjoin the respondent from engaging in such the unlawful practice and order such appropriate relief as will be appropriate, which may include, but is not limited to, temporary or permanent injunctions, equitable relief, and backpay limited to no more than two years from the date the complainant has complaint was filed a sworn charge with the equal employment opportunity commission or filed the complaint in the state department or the court. Interim earnings or amounts earnable with reasonable diligence by the person ~~or persons~~ discriminated against ~~shall operate to~~ reduce the backpay otherwise allowable. In any action or proceeding under this chapter the court may grant, ~~in its discretion,~~ the prevailing party a reasonable attorney's fee as part of the costs. If the court finds that the complainant's allegation of a discriminatory practice is false and not made in good faith, the court shall order the complainant to pay court costs and reasonable attorney's fees incurred by the respondent in responding to the allegation.

⁶⁴ **SECTION 5. AMENDMENT.** Section 14-02.4-21 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-21. Optional mediation by department of labor - Relief - Appeals - Records exempt. ~~The department of labor may receive complaints of discriminating employment practices under this chapter and may investigate the complaints to determine if there is probable cause to believe the complaint is meritorious and, if so, attempt to obtain voluntary compliance with this chapter's employment requirements through informal advice, negotiation, or conciliation. This chapter does not prohibit a person from filing, or require a person to file, a complaint with the department of labor before using the provisions of this chapter. A complaint received and information by the department under this chapter is an open record. Information obtained during any investigation conducted under this section are 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 commissioner department may disclose to the complainant or the respondent, or attorneys for the complainant or respondent, information obtained under this section during an investigation if deemed determined necessary by the commissioner department for securing an appropriate resolution of a complaint. Any record or information held by the department of labor pursuant to an agreement with any federal agency for the enforcement of fair employment practices is exempt from section 44-04-18, and the The department of labor may disclose to federal officials information obtained under this section chapter if appropriate to carry out the enforcement of fair employment practices pursuant to the necessary for the processing of complaints under an agreement with the agency. The department of labor may not disclose anything said or done as part of the informal negotiation or conciliation efforts relating to a complaint under this section chapter.~~

⁶³ Section 14-02.4-20 was also amended by section 1 of Senate Bill No. 2113, chapter 146.

⁶⁴ Section 14-02.4-21 was also amended by section 2 of Senate Bill No. 2113, chapter 146.

⁶⁵ **SECTION 6. AMENDMENT.** Section 14-02.5-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-02. Sale or rental.

1. A person may not refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other manner make unavailable or deny a dwelling to an individual because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.
2. A person may not discriminate against an individual in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with a sale or rental of a dwelling because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.
3. This section does not prohibit discrimination against an individual because the individual has been convicted under federal law or the law of any state of the illegal manufacture or distribution of a controlled substance.

SECTION 7. AMENDMENT. Section 14-02.5-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-03. Publication. A person may not make, print, or publish or effect the making, printing, or publishing of a notice, statement, or advertisement that is about the sale or rental of a dwelling and that indicates any preference, limitation, or discrimination or the intention to make a preference, limitation, or discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.

SECTION 8. AMENDMENT. Section 14-02.5-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-04. Inspection. A person may not represent to an individual because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance that a dwelling is not available for inspection for sale or rental when the dwelling is available for inspection.

SECTION 9. AMENDMENT. Section 14-02.5-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-05. Entry into neighborhood. A person may not, for profit, induce or attempt to induce another to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of an individual of a particular race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.

⁶⁵ Section 14-02.5-02 was also amended by section 1 of House Bill No. 1448, chapter 148.

⁶⁶ **SECTION 10. AMENDMENT.** Section 14-02.5-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-07. Residential real estate-related transaction. A person whose business includes engaging in residential real estate-related transactions may not discriminate against an individual in making a real estate-related transaction available or in the terms or conditions of a real estate-related transaction because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance. A residential real estate-related transaction is the selling, brokering, or appraising of residential real property or the making or purchasing of loans or the provision of other financial assistance to purchase, construct, improve, repair, maintain a dwelling, or to secure residential real estate. For the purposes of this section, a person is in the business of selling residential real property if within the preceding twelve months, the person has participated as principal in three or more transactions involving the sale of any dwelling or any interest in a dwelling or has participated as agent, other than in the sale of the person's own personal residence, in providing sales facilities or sales services in two or more transactions involving the sale of any dwelling or any interest in a dwelling.

SECTION 11. AMENDMENT. Section 14-02.5-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-08. Brokerage services. A person may not deny an individual access to, or membership or participation in, a multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against an individual in the terms or conditions of access, membership, or participation in the organization, service, or facility because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.

SECTION 12. AMENDMENT. Section 14-02.5-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-10. Religious organization, private club, and appraisal exemption.

1. This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to individuals of the same religion or giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, or national origin.
2. This chapter does not prohibit a private club that is not in fact open to the public and that, as an incident to its primary purpose, provides lodging that it owns or operates for other than a commercial purpose from limiting the rental or occupancy of the lodging to its members or

⁶⁶ Section 14-02.5-07 was also amended by section 2 of Senate Bill No. 2154, chapter 147.

from giving preference to its members, unless membership in the club is restricted because of race, color, or national origin.

3. This chapter does not prohibit a person engaged in the business of furnishing appraisals of real property from considering in those appraisals factors other than race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance.

SECTION 13. AMENDMENT. Section 14-02.5-45 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-45. Intimidation or interference - Penalty.

1. A person commits an offense if the person, without regard to whether the person is acting under color of law, by force or threat of force, intentionally intimidates or interferes with an individual:
 - a. Because of the individual's race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance and because the individual is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or
 - b. Because the individual is or has been or to intimidate the individual from participating, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance, in an activity, service, organization, or facility described by subdivision a; affording another individual opportunity or protection to so participate; or lawfully aiding or encouraging other individuals to participate, without discrimination because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage or public assistance, in an activity, service, organization, or facility described in subdivision a.
2. It is a discriminatory practice to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of the individual having exercised or enjoyed, or on account of the individual having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.
3. An offense under subsection 1 of this section is a class A misdemeanor.

SECTION 14. REPEAL. Section 14-02.4-12.1 of the North Dakota Century Code is repealed.

SECTION 15. COMMISSIONER OF LABOR TO REPORT TO LEGISLATIVE ASSEMBLY. Between the first and tenth legislative days of the fifty-eighth legislative assembly, the commissioner of labor shall submit a report at a public hearing before a standing committee of each house of the legislative assembly. The report must include information and statistics regarding the nature, number, status, and disposition of complaints received by the department of labor under chapters 14-02.4 and 14-02.5.

Approved April 24, 2001

Filed April 24, 2001

CHAPTER 146

SENATE BILL NO. 2113

(Industry, Business and Labor Committee)
(At the request of the Labor Commissioner)

BACKPAY AND DISCRIMINATION COMPLAINTS

AN ACT to amend and reenact sections 14-02.4-20 and 14-02.4-21 of the North Dakota Century Code, relating to the timeframe and type of complaint filed for appropriate relief for backpay, the correct agency for filing a complaint of employment discrimination, and the disclosure of anything said or done as part of informal negotiation or conciliation efforts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶⁷ **SECTION 1. AMENDMENT.** Section 14-02.4-20 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-20. Relief. If the court determines that the respondent has engaged in or is engaging in an unlawful practice, the court may enjoin the respondent from engaging in such unlawful practice and order such appropriate relief as will be appropriate which may include, ~~but is not limited to,~~ temporary or permanent injunctions, equitable relief, and backpay limited to no more than two years from the date the complainant has filed a ~~sworn charge~~ minimally sufficient complaint with the equal employment opportunity commission North Dakota department of labor on a form prescribed by the department or filed the complaint in the state court. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. In any action or proceeding under this chapter the court may grant, in its discretion, the prevailing party a reasonable attorney's fee as part of the costs.

⁶⁸ **SECTION 2. AMENDMENT.** Section 14-02.4-21 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-21. Optional mediation by department of labor - Relief - Appeals - Records exempt. The department of labor may receive complaints of discriminating employment practices under this chapter and may investigate the complaints to determine if there is probable cause to believe the complaint is meritorious and, if so, attempt to obtain voluntary compliance with this chapter's employment requirements through informal advice, negotiation, or conciliation. This chapter does not prohibit a person from filing, or require a person to file, a complaint with the department of labor before using the provisions of this chapter. A complaint received and information obtained during any investigation conducted under this section are exempt from section 44-04-18 before the institution of any judicial proceedings under this chapter. The commissioner may disclose to the complainant

⁶⁷ Section 14-02.4-20 was also amended by section 4 of Senate Bill No. 2217, chapter 145.

⁶⁸ Section 14-02.4-21 was also amended by section 5 of Senate Bill No. 2217, chapter 145.

or the respondent, or attorneys for the complainant or respondent, information obtained under this section if deemed necessary by the commissioner for securing an appropriate resolution of a complaint. Any record or information held by the department of labor pursuant to an agreement with any federal agency for the enforcement of fair employment practices is exempt from section 44-04-18, and the department of labor may disclose to federal officials information obtained under this section if appropriate to carry out the enforcement of fair employment practices pursuant to the agreement. The department of labor may not disclose anything said or done as part of the informal negotiation or conciliation efforts under this section except to the federal equal employment opportunity commission as needed for proper processing and closure.

Approved April 17, 2001

Filed April 17, 2001

CHAPTER 147

SENATE BILL NO. 2154

(Political Subdivisions Committee)
(At the request of the Labor Commissioner)

HOUSING DISCRIMINATION

AN ACT to create and enact section 14-02.5-46 of the North Dakota Century Code, relating to exempt records in housing discrimination complaints filed with the department of labor; to amend and reenact subsections 1 and 3 of section 14-02.5-01, sections 14-02.5-07, 14-02.5-09, 14-02.5-11, 14-02.5-18, and 14-02.5-21, subsection 2 of section 14-02.5-22, section 14-02.5-24, subsection 2 of section 14-02.5-25, subsection 2 of section 14-02.5-26, section 14-02.5-36, and subsections 3 and 5 of section 14-02.5-39 of the North Dakota Century Code, relating to housing discrimination complaints, investigations, aggrieved parties, and exemptions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 14-02.5-01 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. "~~Aggrieved individual~~" "Aggrieved person" includes any ~~individual person~~ who claims to have been injured by a discriminatory housing practice or believes that the ~~individual person~~ will be injured by a discriminatory housing practice that is about to occur.
3. "Conciliation" means the informal negotiations among an aggrieved ~~individual person~~, the respondent, and the department to resolve issues raised by a complaint or by the investigation of the complaint.

⁶⁹ **SECTION 2. AMENDMENT.** Section 14-02.5-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-07. Residential real estate-related transaction. A person whose business includes engaging in residential real estate-related transactions may not discriminate against an individual in making a real estate-related transaction available or in the terms or conditions of a real estate-related transaction because of race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage. A residential real estate-related transaction is the selling, brokering, or appraising of residential real property or the making or purchasing of loans or the provision of other financial assistance to purchase, construct, improve, repair, maintain a dwelling, or to secure residential real estate. ~~For the purposes of this section, a person is in the business of selling residential real property if within the preceding twelve months, the person has participated as principal in three or more~~

⁶⁹ Section 14-02.5-07 was also amended by section 10 of Senate Bill No. 2217, chapter 145.

transactions involving the sale of any dwelling or any interest in a dwelling or has participated as agent, other than in the sale of the person's own personal residence, in providing sales facilities or sales services in two or more transactions involving the sale of any dwelling or any interest in a dwelling. Nothing in this section prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, disability, age, familial status, national origin, or status with respect to marriage.

SECTION 3. AMENDMENT. Section 14-02.5-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-09. Sales and rentals exempted.

1. Sections 14-02.5-02 through 14-02.5-08 do not apply to the sale or rental of a single-family house sold or rented by the owner if the owner does not own more than three single-family houses at any one time or own any interest in, nor is there owned or reserved on the person's behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time. In addition, the house must be sold or rented without the use of the sales or rental facilities or services of a licensed real estate broker, agent, or realtor, or of a person in the business of selling or renting dwellings, or of an employee or agent of a ~~licensed any such~~ broker, agent, or realtor, ~~or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families~~ person; or the publication, posting, or mailing of a notice, statement, or advertisement prohibited by section 14-02.5-03. The exemption provided in this subsection applies only to one sale or rental in a twenty-four-month period, if the owner was not the most recent resident of the house at the time of the sale or rental. For the purposes of this subsection, a person is in the business of selling or renting dwellings if the person:
 - a. Within the preceding twelve months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest in a dwelling, or;
 - b. Within the preceding twelve months, has participated as agent, other than in the sale of the person's own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest in a dwelling, or;
 - c. Is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.
2. Sections 14-02.5-02 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.
3. ~~The exemption in subsection 1 applies only to one sale or rental in a twenty-four-month period, if the owner was not the most recent resident of the house at the time of the sale or rental.~~

SECTION 4. AMENDMENT. Section 14-02.5-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-11. Housing for elderly exempted.

1. The provisions of this chapter relating to familial status and age do not apply to housing that the secretary of housing and urban development determines is specifically designed and operated to assist elderly individuals under a federal program; the department determines is specifically designed and operated to assist elderly individuals under a ~~federal or~~ state program; is intended for, and solely occupied by, individuals sixty-two years of age or older; or is intended and operated for occupancy by at least one individual fifty-five years of age or older for each unit as determined by department rules. In determining whether housing qualifies as housing for elderly ~~under this section~~ because it is intended and operated for occupancy by at least one individual fifty-five years of age or older for each unit, the department shall adopt rules that require at least the following factors:
 - a. ~~The existence of significant facilities and services specifically designed to meet the physical or social needs of older individuals or, if the provision of the facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older individuals;~~
 - ~~b.~~ That at least eighty percent of the units are occupied by at least one individual fifty-five years of age or older per unit; and
 - ~~c.~~ b. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for individuals fifty-five years of age or older.
2. Housing may not be considered to be in violation of the requirements for housing for elderly under this section by reason of:
 - a. Individuals residing in the housing as of October 1, 1999, who do not meet the age requirements of this section, provided that new occupants of the housing meet the age requirements; or
 - b. Unoccupied units, provided that the units are reserved for occupancy by individuals who meet the age requirements of this section.

SECTION 5. AMENDMENT. Section 14-02.5-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-18. Complaint.

1. The department shall investigate complaints of alleged discriminatory housing practices. An aggrieved ~~individual~~ person may file a complaint with the department alleging the discriminatory housing practice. The department may file a complaint. A complaint must be in writing; ~~under oath, and in the form~~ and must contain such information and be in such form as prescribed by the department. A complaint must be filed on or before the first anniversary of the date the alleged discriminatory

housing practice occurs or terminates, whichever is later. A complaint may be amended at any time.

2. On the filing of a complaint, the department shall give the aggrieved ~~individual person~~ notice that the complaint has been received, advise the aggrieved ~~individual person~~ of the time limits and choice of forums under this chapter, and not later than the tenth day after the date of the filing of the complaint or the identification of an additional or substitute respondent under section ~~14-02.5-22~~ 14-02.5-21, serve on each respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this chapter and a copy of the original complaint.

SECTION 6. AMENDMENT. Section 14-02.5-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-21. Additional or substitute respondent. The department may join a person not named in the complaint as an additional or substitute respondent if during the investigation the department determines that the person is alleged to be engaged ~~or~~, to have engaged, or to be about to engage in the discriminatory housing practice upon which the complaint is based. In addition to the information required in the notice under subsection 2 of section 14-02.5-18, the department shall include in a notice to a respondent joined under this section the reasons for the determination that the person is properly joined as a respondent.

SECTION 7. AMENDMENT. Subsection 2 of section 14-02.5-22 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 ~~concerned persons~~ the parties to the conciliation. ~~After completion of the department's investigation, the department shall make available to the aggrieved individual and the respondent, at any time, information derived from the investigation and the final investigative report relating to that investigation.~~

SECTION 8. AMENDMENT. Section 14-02.5-24 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-24. Investigative report. The department shall prepare a final investigative report, including the names of and dates of contacts with witnesses, a summary of correspondence and other contacts with the aggrieved ~~individual person~~ and the respondent showing the dates of the correspondence and contacts, a summary description of other pertinent records, a summary of witness statements, and answers to interrogatories. A final report under this section may be amended if additional evidence is discovered.

SECTION 9. AMENDMENT. Subsection 2 of section 14-02.5-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If making the determination within the period is impracticable, the department shall give in writing to the complainant and the respondent the reasons for the delay. If the department determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the department shall, except as provided by section 14-02.5-27, immediately issue a charge on behalf of the aggrieved ~~individual~~ person.

SECTION 10. AMENDMENT. Subsection 2 of section 14-02.5-26 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~Upon~~ Within three days after issuing a charge, the department shall send a copy of the charge with information about the election under section 14-02.5-30 to each respondent and each aggrieved ~~individual~~ person on whose behalf the complaint was filed.

SECTION 11. AMENDMENT. Section 14-02.5-36 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-02.5-36. Attorney general action for enforcement. If a timely election is made under section 14-02.5-30, the department shall authorize and the attorney general shall file not later than the thirtieth day after the date of the election a claim for relief seeking relief on behalf of the aggrieved person in a district court. Venue for an action is in the county in which the alleged discriminatory housing practice occurred or is about to occur. An aggrieved ~~individual~~ person may intervene in the action. If the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief that a court may grant in a civil action under sections 14-02.5-39 through 14-02.5-44. If monetary relief is sought for the benefit of an aggrieved ~~individual~~ person who does not intervene in the civil action, the court may not award the monetary relief if that aggrieved ~~individual~~ person has not complied with discovery orders entered by the court.

SECTION 12. AMENDMENT. Subsections 3 and 5 of section 14-02.5-39 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. An aggrieved ~~individual~~ person may file a claim for relief whether a complaint has been filed under section 14-02.5-18 and without regard to the status of any complaint filed under that section.
5. An aggrieved ~~individual~~ person may not file a claim for relief with respect to an alleged discriminatory housing practice that forms the basis of a charge issued by the department if the department has begun a hearing on the record under this chapter with respect to the charge.

SECTION 13. Section 14-02.5-46 of the North Dakota Century Code is created and enacted 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 the administrative closure of a complaint by the department. The commissioner may disclose to the complainant or the respondent, or representatives of the complainant or respondent, information obtained under this section if deemed

necessary by the commissioner for securing an appropriate resolution of a complaint.
Investigative working papers are exempt from section 44-04-18.

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

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 148

HOUSE BILL NO. 1448

(Representatives Kasper, Renner, Ruby, Sandvig)
(Senators Christmann, Mutch)

UNMARRIED COUPLE PROPERTY RENTAL

AN ACT to create and enact a new subsection to section 14-02.5-02 of the North Dakota Century Code, relating to rental property for unmarried couples.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷⁰ **SECTION 1.** A new subsection to section 14-02.5-02 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Nothing in this chapter prevents a person from refusing to rent a dwelling to two unrelated individuals of opposite gender who are not married to each other.

Approved March 27, 2001

Filed March 27, 2001

⁷⁰ Section 14-02.5-02 was also amended by section 6 of Senate Bill No. 2217, chapter 145.

CHAPTER 149

SENATE BILL NO. 2046

(Legislative Council)
(Judiciary Committee)

DIVORCE AND CHILD CUSTODY AND SUPPORT

AN ACT to create and enact a new section to chapter 12.1-18 and five new sections to chapter 14-05 of the North Dakota Century Code, relating to the removal of children from the state, to decrees of separation, and the duty to support children; to amend and reenact sections 14-04-04, 14-05-03, 14-05-08, 14-05-10, 14-05-17, 14-05-23, 14-05-25.1, and 14-09-08 of the North Dakota Century Code, relating to decrees of separation and divorce; to repeal sections 14-05-11 and 14-05-12 and chapter 14-06 of the North Dakota Century Code, relating to separation from bed and board and grounds for divorce; 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 12.1-18 of the North Dakota Century Code is created and enacted as follows:

Removal of child from state in violation of custody decree - Penalty. Any person who intentionally removes, causes the removal of, or detains the person's own child under the age of eighteen years outside this state with the intent to deny another person's rights in violation of an existing custody decree is guilty of a class C felony. Detaining the child outside this state in violation of the custody decree for more than seventy-two hours is prima facie evidence that the person charged intended to violate the custody decree at the time of removal.

SECTION 2. AMENDMENT. Section 14-04-04 of the North Dakota Century Code is amended and reenacted as follows:

14-04-04. Custody of children. The court shall award the custody of the children of a marriage annulled on the ground of fraud or force to ~~the innocent parent and also may provide for their education and maintenance out of the property of the guilty~~ a party based upon the best interests and welfare of the child criteria set forth in chapter 14-09.

SECTION 3. A new section to chapter 14-05 of the North Dakota Century Code is created and enacted as follows:

Grounds for separation. The court may grant a temporary or permanent decree of separation for any cause for which a divorce may be decreed.

SECTION 4. AMENDMENT. Section 14-05-03 of the North Dakota Century Code is amended and reenacted as follows:

14-05-03. Causes for divorce. Divorces may be granted for any of the following causes:

1. Adultery.
2. Extreme cruelty.
3. Willful desertion.
4. Willful neglect.
5. ~~Habitual intemperance.~~ Abuse of alcohol or controlled substances.
6. Conviction of felony.
7. ~~Insanity for a period of five years, the insane person having been an inmate of an institution for such period, and affected with any psychosis. No divorce may be granted because of insanity until after a thorough examination of such insane person by three physicians who are recognized authorities on mental diseases, one of which physicians must be the superintendent of the state hospital for the mentally ill, or the chief medical officer of a veterans administration hospital or government institution within or without the state of North Dakota, the other two physicians to be appointed by the court before whom the action is pending, all of whom must agree that such insane person is incurable. No divorce may be granted to any person whose husband or wife is an inmate of an institution, except a United States government hospital or institution, in any other than the state of North Dakota, unless the person applying for such divorce has been a resident of the state of North Dakota for at least five years.~~
8. Irreconcilable differences.

SECTION 5. AMENDMENT. Section 14-05-08 of the North Dakota Century Code is amended and reenacted as follows:

14-05-08. ~~Habitual intemperance~~ Abuse of alcohol or controlled substances defined. ~~Habitual intemperance~~ Abuse of alcohol or controlled substances is that degree of intemperance from the use of intoxicating drinks, morphine, opium, chloral, cocaine, or other like narcotic drugs, which disqualifies the person a great portion of the time from properly attending to business, or which reasonably would inflict a course of great mental anguish upon the innocent party. For purposes of this chapter, "controlled substance" means a substance as defined in section 19-03.1-01.

SECTION 6. AMENDMENT. Section 14-05-10 of the North Dakota Century Code is amended and reenacted as follows:

14-05-10. Denial of divorce. Divorces must be denied upon showing:

1. ~~Connivance;~~
2. ~~Collusion;~~
3. ~~Condonation; or~~
4. 2. Limitation and lapse of time.

SECTION 7. AMENDMENT. Section 14-05-17 of the North Dakota Century Code is amended and reenacted as follows:

14-05-17. Residence requirements. A separation or divorce may not be granted unless the plaintiff in good faith has been a resident of the state for six months next preceding commencement of the action. If the plaintiff has not been a resident of this state for the six months preceding commencement of the action, a separation or divorce may be granted if the plaintiff in good faith has been a resident of this state for the six months immediately preceding entry of the decree of separation or divorce.

SECTION 8. Three new sections to chapter 14-05 of the North Dakota Century Code are created and enacted as follows:

Separation - Spousal support - Division of property. Upon the granting of a separation, the court may include in the decree an order requiring a party to pay for spousal support and for the support of any minor children of the parties. Subject to section 14-05-24, the decree may also provide for the equitable division of the property and debts of the parties.

Decree of separation - Effect. The decree of separation confers upon the parties all the rights of property, business, and contracts as if unmarried and releases both parties from all obligations of maintenance, except as may be required by the decree.

Revocation of decree of separation - Divorce granted. At any time after a decree for separation has been granted, the court may revoke the decree based upon any regulations or restrictions the court imposed in the decree. Application for revocation may be made by either party to the decree. The party making the application for revocation shall provide to the other party to the decree at least ten days' and not more than twenty days' notice of the application. Service must be made in the same manner as service of a summons in a civil action. If it appears to the court at the hearing of the application that reconciliation between the parties to the marriage is improbable, the court shall revoke the separation decree and, in lieu of that decree, shall render a decree divorcing the parties. If the court has not previously done so, the court shall provide for the equitable division of the property, shall make orders with respect to any minor children, and may provide for the payment of support to either party by the other.

SECTION 9. AMENDMENT. Section 14-05-23 of the North Dakota Century Code is amended and reenacted as follows:

14-05-23. Temporary support, attorney fees, and custody. During any time in which an action for separation or divorce is pending, the court, upon application of a party, may issue an order requiring a party to pay such support as may be necessary for the support of a party and minor children of the parties and for the payment of attorney fees. The court in the order may award custody of minor children to a party. The order may be issued and served in accordance with the North Dakota Rules of Court. The court may include in the order a provision for domestic violence protection provided the party has submitted a verified application for the order which is sufficient to meet the criteria defined in subsection 2 of section 14-07.1-01. A violation of the protection provision of the order is subject to the penalties established in section 14-07.1-06 and the arrest procedures authorized in section 14-07.1-11.

SECTION 10. A new section to chapter 14-05 of the North Dakota Century Code is created and enacted as follows:

Spousal support. Taking into consideration the circumstances of the parties, the court may require one party to pay spousal support to the other party for any period of time. The court may modify its spousal support orders.

SECTION 11. AMENDMENT. Section 14-05-25.1 of the North Dakota Century Code is amended and reenacted as follows:

14-05-25.1. Money judgment to secure division of property enforceable by contempt proceedings - Exemptions from process not available. Failure to comply with the provisions of a separation or divorce decree relating to distribution of the property of the parties constitutes contempt of court. A party may also execute on a money judgment, and the obligor is entitled only to the absolute exemptions from process set forth in section 28-22-02.

SECTION 12. AMENDMENT. Section 14-09-08 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08. Mutual duty to support children. Parents shall give their children support and education suitable to the child's circumstances. The court may compel either or both of the parents to provide for the support of their children.

SECTION 13. REPEAL. Sections 14-05-11 and 14-05-12 and chapter 14-06 of the North Dakota Century Code are repealed.

SECTION 14. EMERGENCY. Section 1 of this Act is declared to be an emergency measure.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 150

SENATE BILL NO. 2045

(Legislative Council)
(Judiciary Committee)

PROPERTY DIVISION IN DIVORCE

AN ACT to amend and reenact sections 14-05-24 and 14-09-06.4 of the North Dakota Century Code, relating to the division of property in divorce proceedings and immunity for guardians ad litem and child custody investigators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-24 of the North Dakota Century Code is amended and reenacted as follows:

14-05-24. ~~Permanent alimony~~ - Division of property.

1. When a divorce is granted, the court shall make ~~such an~~ an equitable distribution of the ~~real and personal~~ property and debts of the parties ~~as may seem just and proper, and may compel either of the parties to provide for the maintenance of the children of the marriage, and to make such suitable allowances to the other party for support during life or for a shorter period as to the court may seem just, having regard to the circumstances of the parties respectively. The court from time to time may modify its orders in these respects.~~
2. The court may redistribute property in a postjudgment proceeding if a party has failed to disclose property and debts as required by rules adopted by the supreme court, or the party fails to comply with the terms of a court order distributing property and debts.

SECTION 2. AMENDMENT. Section 14-09-06.4 of the North Dakota Century Code is amended and reenacted as follows:

14-09-06.4. Appointment of guardian ad litem or child custody investigator for children in custody, support, and visitation proceedings - Immunity. In any action for an annulment, divorce, legal separation, or other action affecting marriage, where either party has reason for special concern as to the future of the minor children, and in ~~actions affecting the marriage relationship~~ any action where the custody or visitation of ~~such~~ children is contested, either party to the action may petition the court for the appointment of a guardian ad litem to represent the children concerning custody, support, and visitation. The court, in its discretion, may appoint a guardian ad litem or child custody investigator on its own motion. If appointed, a guardian ad litem shall serve as an advocate of the children's best interests. If appointed, the child custody investigator shall provide those services as prescribed by the supreme court. The court may direct either or both parties to pay the guardian ad litem or child custody investigator fee established by the court. If neither ~~of the parties~~ are party is able to pay the fee, the court may direct the fee to be paid, in whole or in part, by the county of venue. The court may direct either or both parties to reimburse the county, in whole or in part, for such payment. Any guardian ad litem or child custody investigator appointed under this section who acts

in good faith in making a report to the court is immune from any civil liability resulting from the report. For the purpose of determining good faith, the good faith of the guardian ad litem or child custody investigator is a disputable presumption.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 151

SENATE BILL NO. 2281

(Senators Watne, Lyson)
(Representatives Disrud, Mahoney, Wrangham)

PROTECTION ORDERS

AN ACT to create and enact a new subsection to section 14-07.1-02 of the North Dakota Century Code, relating to the issuance of a protection order based upon actions occurring outside the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 14-07.1-02 of the North Dakota Century Code is created and enacted as follows:

Upon the application of an individual residing within the state, a court may issue a domestic violence protection order or an ex parte temporary protection order under this chapter even though the actions constituting domestic violence occurred exclusively outside the state. In these cases, a respondent is subject to the personal jurisdiction of this state upon entry into this state. If the domestic violence justifying the issuance of a protection order under this chapter occurred exclusively outside the state, the relief that may be granted is limited to an order restraining the party from having contact with or committing acts of domestic violence on another person in this state.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 152

SENATE BILL NO. 2160

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD SUPPORT

AN ACT to create and enact a new section to chapter 14-09 and a new section to chapter 50-09 of the North Dakota Century Code, relating to exempting child support payments from legal process and exempting child support agencies from certain statutory fees; to amend and reenact sections 14-08.1-05 and 14-09-08.16, subsections 1 and 5 of section 14-09-09.3, subsection 2 of section 28-21-05.2, subsection 3 of section 35-34-04, subsections 3 and 5 of section 50-09-08.2, and subsection 2 of section 50-09-14 of the North Dakota Century Code, relating to technical and conforming amendments to child support laws, removal of time limitations on the duration of liens and the issuance of executions, requests for information from an income payor, time for commencement of a contempt proceeding against an income payor, clarifying the contents of an administrative writ of execution, removal of the requirement that the secretary of state charge vessel lien fees in past-due child support matters, and providing for review of child support liens; and to repeal section 35-34-11 of the North Dakota Century Code, relating to review of child support liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-08.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-08.1-05. Support order to be judgment.

1. Any order directing any payment or installment of money for the support of a child is, on and after the date it is due and unpaid:
 - a. A judgment by operation of law, with the full force, effect, and attributes of a judgment of the district court, and must be entered in the judgment docket, upon filing by the judgment creditor or the judgment creditor's assignee of a written request accompanied by a verified statement of arrearage or certified copy of the payment records of ~~the clerk of district court~~ maintained under section ~~14-09-08.1~~ 50-09-02.1 and an affidavit of identification of the judgment debtor, and otherwise enforced as a judgment. ~~The due and unpaid payments and any judgment entered in the judgment docket pursuant to this section are not subject to the statutes of limitations provided in chapter 28-04, nor may such judgment be canceled pursuant to section 28-20-35;~~
 - b. Entitled as a judgment to full faith and credit in any jurisdiction which otherwise affords full faith and credit to judgments of the district court; and
 - c. Not subject to retroactive modification.

2. The due and unpaid payments and any judgment entered in the judgment docket pursuant to this section are not subject to the statutes of limitation provided in chapter 28-01. Such judgments may not be canceled pursuant to section 28-20-35. For such judgments, the duration of a lien under section 28-20-13 and the period during which an execution may be issued are not subject to the time limitations in chapters 28-20 and 28-21.
3. Failure to comply with the provisions of a judgment or order of the court for the support of a child constitutes contempt of court. All remedies for the enforcement of judgments apply. A party or the party's assignee may also execute on the judgment, and the obligor is entitled only to the exemptions from process set forth in section 28-22-02.
3. 4. This section applies to all child support arrearages, whether accrued before or after the effective date of this section.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Child support exempt from process. A child support obligation owed to an obligee who is a judgment debtor may not be subject to execution, garnishment, attachment, or other process except to satisfy that child support obligation.

SECTION 3. AMENDMENT. Section 14-09-08.16 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.16. Requests for information from income payor.

1. A child support agency or the public authority may mail a request for information to the income payor in any matter in which it secures reliable information that the income payor may be indebted to an obligor. The request must identify the obligor by name, and, if known, address and social security number.
2. Within ten days after receipt of a request for information issued under subsection 1, an income payor shall provide the requester with a written statement informing the requester whether or not the income payor is, or within the thirty days immediately preceding receipt of the request has been, an income payor with respect to that obligor. If the income payor is, or within the previous thirty days has been, an income payor with respect to that obligor, the income payor 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 ~~six~~ 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 payor;
 - d. The social security number under which payment of any income by the income payor to the obligor is reported;

- e. The obligor's address; and
 - f. If the income payor is no longer an income payor with respect to that obligor, the date of last payment and any forwarding address.
3. Any income payor failing to comply with any requirements of this section may be punished ~~by the court~~ for ~~civil~~ contempt of court. The court shall first afford such income payor a reasonable opportunity to purge itself of contempt.
 4. A proceeding against an income payor under this section may be commenced upon motion by a child support agency or the public authority and must be commenced within ninety days after the income payor's act or failure to act upon which such proceeding is based.

SECTION 4. AMENDMENT. Subsections 1 and 5 of section 14-09-09.3 of the North Dakota Century Code are amended and reenacted as follows:

1. Any income payor failing to comply with ~~any requirements in this section~~ or section 14-09-09.16 may be punished ~~by the court~~ for ~~civil~~ contempt of court. The court shall first afford such income payor a reasonable opportunity to purge itself of such contempt.
5. Any contempt proceeding against an income payor under this section must be commenced within ~~ninety~~ one hundred and eighty days after the income payor's act or failure to act upon which such proceeding is based.

SECTION 5. AMENDMENT. Subsection 2 of section 28-21-05.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A writ of execution issued by the department of human services must be issued as provided in section 28-21-06, except the writ may omit:
 - a. The seal of the court;
 - b. The subscription of the clerk of that court;
 - c. The attestation in the name of the judge of the court that entered the judgment;
 - d. A statement of the courts and counties to which the judgment has been transcribed; and
- ~~d.~~ e. If the writ is issued to a sheriff of a county other than the county in which the judgment is docketed, a date and time of docketing in that sheriff's county.

SECTION 6. AMENDMENT. Subsection 3 of section 35-34-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The secretary of state shall remove and destroy the lien notification statement in the same manner as provided for other liens in section 11-18-14 for the register of deeds. ~~The secretary of state shall charge~~

the same filing and information retrieval fees and credit the amounts in the same manner as financing statements filed under chapter 41-09.

SECTION 7. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Child support agencies exempt from certain fees. The register of deeds and secretary of state may not charge or collect any fee otherwise prescribed by law from a state or county agency engaged in the establishment of paternity or the establishment, modification, or enforcement of child support orders.

⁷¹ **SECTION 8. AMENDMENT.** Subsections 3 and 5 of section 50-09-08.2 of the North Dakota Century Code are amended and reenacted as follows:

3. a. As provided in title IV-D, a person is immune from suit or any liability under any federal or state law:
 - (1) For any disclosure of information, in any form, made under this section, to the state agency, a county agency, or an official, employee, or agent of either;
 - (2) For encumbering or surrendering any assets held by a financial institution in response to a notice of lien or an execution issued by the state agency as provided in ~~subsection 7 of section 23-02.1-19~~ 28-21-05.2 and chapter ~~34-15~~ 35-34; or
 - (3) For any other action taken in good faith to comply with the requirements of this section.
- b. The court shall award reasonable attorney's fees and costs against any person who commences an action that is subsequently dismissed by reason of the immunity granted by this section.
5. All employing or contracting entities within this state, including for-profit, nonprofit, and governmental employers, shall provide information on the employment, compensation, and benefits of any individual employed by such entity as an ~~employer~~ employee or contractor within ten days of a request made under subsection 1 or made by the agency of any other state charged with administration of programs under title IV-D. An entity that receives a request for which a response is required by this section is subject to a fiscal sanction of twenty-five dollars for each day, beginning on the eleventh day after the request is made and not complied with.

SECTION 9. 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 ~~or~~, this chapter, or chapter

⁷¹ Section 50-09-08.2 was also amended by section 8 of Senate Bill No. 2327, chapter 232.

35-34 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 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 or, this chapter, or chapter 35-34 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 10. REPEAL. Section 35-34-11 of the North Dakota Century Code is repealed.

Approved March 29, 2001
Filed March 29, 2001

CHAPTER 153

SENATE BILL NO. 2047

(Legislative Council)
(Judiciary Committee)

GRANDPARENT VISITATION

AN ACT to amend and reenact section 14-09-05.1 of the North Dakota Century Code, relating to grandparental rights of visitation of unmarried minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-05.1 of the North Dakota Century Code is amended and reenacted as follows:

14-09-05.1. Grandparental rights of visitation to unmarried minors - Mediation or arbitration. The grandparents and great-grandparents of an unmarried minor ~~must~~ may be granted reasonable visitation rights ~~and the great-grandparents may be granted reasonable visitation rights~~ to the minor by the district court upon ~~application by the grandparents or great-grandparents unless a finding is made that visitation is not~~ would be in the best interests of the minor and would not interfere with the parent-child relationship. ~~Visitation rights of grandparents to an unmarried minor are presumed to be in the best interest of the minor.~~ The court shall consider the amount of personal contact that has occurred between the grandparents or great-grandparents and the minor and the minor's parents. This section does not apply to agency adoptions or when the minor has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted under this section before the adoption of the minor may be terminated upon the adoption if termination of the rights is in the best interest of the minor. An application for visitation rights under this section may be considered by the district court in conjunction with a divorce proceeding involving the parent of the minor child. If any district court of this state retains jurisdiction over the custodial placement of the minor child or children by virtue of any prior proceedings, the rights conferred by this section may be enforced by the grandparents or the great-grandparents through motion under the prior proceeding. If no district court otherwise has jurisdiction, a proceeding to enforce grandparental rights may be brought against the custodial parent as a civil action and venued in the county of residence of the minor child. The district court may require mediation of the matter under chapter 14-09.1. If mediation fails and if the mediator agrees, the court may order the dispute arbitrated by the person who attempted mediation. Joinder of grandparents or of great-grandparents awarded visitation rights under this section must occur in any proceeding to terminate parental rights.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 154**SENATE BILL NO. 2373**

(Senators Dever, Cook)

CHILD SUPPORT INCOME DETERMINATION

AN ACT to create and enact a new subdivision to subsection 1 of section 14-09-09.7 of the North Dakota Century Code, relating to income determination for child support; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 1 of section 14-09-09.7 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Authorize a rebuttal of the presumption provided in subsection 3 in cases of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control.

SECTION 2. EFFECTIVE DATE. This Act is effective on the earlier of August 1, 2003, or the date the department of human services certifies to the legislative council as the effective date of guidelines adopted which implement section 1 of this Act, as provided by subsection 4 of section 14-09-09.7.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 155

SENATE BILL NO. 2384

(Senator Watne)

CHILD ABUSE AND NEGLECT

AN ACT to amend and reenact sections 14-09-22 and 50-25.1-11 of the North Dakota Century Code, relating to child abuse and neglect and to authorized disclosures of confidential records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-09-22 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-09-22. Abuse or neglect of child - Penalty.

1. Except as provided in subsection 2, a parent, adult family or household member, guardian, or other custodian of any child, who willfully commits any of the following offenses is guilty of a class C felony except if the victim of an offense under subdivision a is under the age of six years in which case the offense is a class B felony:
 - a. Inflicts, or allows to be inflicted, upon the child, bodily injury, substantial bodily injury, or serious bodily injury as defined by section 12.1-01-04 or mental injury.
 - b. Fails to provide proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals.
 - c. Permits the child to be, or fails to exercise reasonable diligence in preventing the child from being, in a disreputable place or associating with vagrants or vicious or immoral persons.
 - d. Permits the child to engage in, or fails to exercise reasonable diligence in preventing the child from engaging in, an occupation forbidden by the laws of this state or an occupation injurious to the child's health or morals or the health or morals of others.
2. A person who provides care, supervision, education, or guidance for a child unaccompanied by the child's parent, adult family or household member, guardian, or custodian in exchange for money, goods, or other services and who while providing such services commits an offense under subdivision a of subsection 1 is guilty of a class B felony. Any such person who commits, allows to be committed, or conspires to commit, against the child, a sex offense as defined in chapter 12.1-20 is subject to the penalties provided in that chapter.

SECTION 2. AMENDMENT. Section 50-25.1-11 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-11. Confidentiality of records - Authorized disclosures. All reports made under this chapter, as well as any other information obtained, are confidential and must be made available to:

1. A physician who has before the physician a child whom the physician reasonably suspects may have been abused or neglected.
2. A person who is authorized to place a child in protective custody and has before the person a child whom the person reasonably suspects may have been abused or neglected and the person requires the information in order to determine whether to place ~~such~~ the child in protective custody.
3. Authorized staff of the department, appropriate county social service boards, and appropriate state and local child protection team members.
4. Any person who is the subject of a report; provided, however, that the identity of persons reporting under this chapter is protected.
5. Public officials and their authorized agents who require ~~such~~ the information in connection with the discharge of their official duties.
6. A court whenever ~~it~~ the court determines that the information is necessary for the determination of an issue before the court.
7. A person engaged in a bona fide research purpose; provided, however, that no information identifying the subjects of a report is made available to the researcher unless the information is absolutely essential to the research purpose and the department gives prior approval.
8. A person who is identified in subsection 1 of section 50-25.1-03, and who has made a report of suspected child abuse or neglect, if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.
9. Parents or a legally appointed guardian of a child who is suspected of being, or having been, abused or neglected, provided the identity of persons making reports or supplying information under this chapter is protected. Unless the information is confidential under section 44-04-18.7, when a decision is made under section 50-25.1-05.1 that services are required to provide for the protection and treatment of an abused or neglected child, the department shall make a good-faith effort to provide written notice of the decision to persons identified in this subsection. The department shall consider any known domestic violence when providing notification under this section.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 156

HOUSE BILL NO. 1168

(Human Services Committee)

(At the request of the Department of Human Services)

UNPAID CHILD SUPPORT INTEREST

AN ACT to create and enact a new section to chapter 14-09 of the North Dakota Century Code, relating to a statement regarding interest on unpaid child support; and to amend and reenact subsection 6 of section 14-09-25 of the North Dakota Century Code, relating to interest on unpaid child support.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 14-09-25 of the 1999 Supplement to 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 judgment for child support obligation is child support. To the extent consistent with the requirements of title IV-D, payments a payment received on judgments for 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, 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 purposes of this subsection, arrearage means an unpaid child support obligation that was due in a month prior to the current month.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is created and enacted as follows:

Child support order - Required interest statement. Each judgment or order requiring the payment of child support must include a statement that the child support obligation will accrue interest if not timely paid. Accrual of interest and validity of the order are not affected by a failure to include the statement required by this section.

Approved April 5, 2001
Filed April 5, 2001

EDUCATION

CHAPTER 157

HOUSE BILL NO. 1336

(Representative F. Klein)

(Senator Dever)

STARK COUNTY FAIRGROUNDS REVISION ELIMINATED

AN ACT to repeal section 2 of chapter 188 of the 1987 Session Laws, relating to reversion of property not used as a fairgrounds in Stark County.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 2 of chapter 188 of the 1987 Session Laws is repealed.

Approved March 26, 2001

Filed March 26, 2001

CHAPTER 158

HOUSE BILL NO. 1074

(Natural Resources Committee)

(At the request of the Board of University and School Lands)

LANDS AND MINERALS TRUST FUND TRANSFER

AN ACT to provide for the transfer of certain mineral interests to the lands and minerals trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Board of university and school lands - Transfer of certain mineral interests to the lands and minerals trust fund. The board of university and school lands shall transfer the "state addition" and "state second addition" mineral interests in Stark County to the lands and minerals trust fund.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 159

SENATE BILL NO. 2041

(Legislative Council)
(Higher Education Committee)

HIGHER EDUCATION STRATEGIC PLAN

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to the North Dakota university system; and to amend and reenact section 15-10-14.2 of the North Dakota Century Code, relating to the higher education system strategic plan.

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:

North Dakota university system - Unified system of higher education.

The institutions of higher education under the control of the state board of higher education are a unified system of higher education, as established by the board, and are designated as the North Dakota university system.

SECTION 2. AMENDMENT. Section 15-10-14.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-14.2. Higher education system review - Plan - Report to legislative council strategic plan - Reports.

1. ~~In 2002, and every six years thereafter, the~~ The state board of higher education shall ~~report to the legislative council and the governor on the status of the~~ adopt a strategic planning process and develop a strategic plan to define and prioritize university system; ~~including the long-term goals and objectives that will best serve the citizens of this state.~~ The board shall provide an annual performance and accountability report regarding performance and progress toward the goals outlined in the university system's strategic plan and accountability measures.
2. ~~During each year, except those years when reports are required by subsection 1, the state board of higher education shall:~~
 - a. ~~Prioritize the long-term goals, including defining and meeting student and institutional expectations regarding teaching and learning, the curriculum, the quality of campus life, and educational services;~~
 - b. ~~Develop specific directions for the pursuit of the goals given priority;~~
 - c. ~~Develop measurable criteria in order to determine the rate of progress toward achieving the goals given priority; and~~
 - d. ~~Develop specific timelines within which the goals given priority must be attained.~~

3. In 2003, and every six years thereafter, the state board of higher education shall report to the legislative council and the governor and present the directions, criteria, and timelines the board developed in accordance with subsection 2.
4. The state board of higher education shall also present to the legislative council and the governor options for generating within the university system the revenues needed to ensure attainment of the goals given priority.
5. The state board of higher education shall report to the legislative council and the governor at least once assembly during each year, except those years when reports are required by subsections 4 and 3, and shall present a progress report regarding its goals and objectives, together with any other information requested by the legislative council or the governor regular legislative session regarding the status of higher education in this state.

Approved April 24, 2001

Filed April 24, 2001

CHAPTER 160

SENATE BILL NO. 2039

(Legislative Council)
(Higher Education Committee)

CAPITAL PROJECT APPROVAL

AN ACT to amend and reenact section 15-10-12.1 of the North Dakota Century Code, relating to legislative approval of capital improvement projects financed by donations, gifts, grants, and bequests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-12.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-12.1. Acceptance of buildings and campus improvements - Legislative approval. The state board of higher education may not authorize the ~~construction of buildings and campus improvements and building maintenance~~ on land under the control of the board which are financed by donations, gifts, grants, and bequests ~~without the consent of the legislative assembly~~ if the cost of the improvement or building maintenance is not more than three hundred eighty-five thousand dollars. The consent of the legislative assembly is required for construction of any building financed by donations, gifts, grants, and bequests and for campus improvements or building maintenance financed by donations, gifts, grants, and bequests if the cost of the improvements or maintenance is more than three hundred eighty-five thousand dollars. During the time the legislative assembly is not in session, except for the six months preceding the convening of a regular session, and unless otherwise restricted by previous legislative action or other law, the state board of higher education, with the approval of the budget section of the legislative council, may authorize the use of land under the control of the board and construct buildings and campus improvements ~~thereon which are~~ financed by donations, gifts, grants, and bequests and campus improvements and building maintenance financed by donations, gifts, grants, and bequests and if the cost of the improvement or maintenance is more than three hundred eighty-five thousand dollars. The budget section approval must include a specific dollar limit for each building ~~or~~ campus improvement project, or maintenance project. ~~The budget section may establish guidelines regarding the types of gifts for minor improvements which do not require the approval of the budget section based upon the financial impact of such construction projects upon the state of North Dakota.~~ The state board of higher education, ~~with the approval of the budget section,~~ may authorize the sale of any real property or buildings which an institution of higher learning has received by gift or bequest. ~~The budget section may~~ board shall prescribe such conditions for the sale of the property as it determines necessary, ~~including.~~ The conditions must include requiring an appraisal and the public auction or advertisement for bids, unless the gift instrument requires a different process. If the state board of higher education submits a request for campus improvements, building maintenance, or to construct buildings under this section to the budget section for approval, the legislative council shall notify each member of the legislative assembly of the date of the budget section meeting at which the request will be considered and provide a copy of the meeting agenda to each

member of the legislative assembly. The chairman of the budget section shall allow any member of the legislative assembly an opportunity to present testimony to the budget section regarding any such request.

Approved April 23, 2001

Filed April 23, 2001

CHAPTER 161

HOUSE BILL NO. 1046

(Legislative Council)

(Education Services Committee)

EDUCATION LAW REVISIONS

AN ACT to create and enact two new sections to chapter 15-10, a new section to chapter 15.1-09, and a new section to chapter 15.1-19 of the North Dakota Century Code, relating to oaths by faculty members, vehicle and heating fuel purchases, and student usage of alcohol or controlled substances; to amend and reenact subsection 1 of section 6-09.4-23, sections 15-19-01, 15-19-04, 15.1-06-01, 15.1-07-02, 15.1-07-03, 15.1-07-17, and 15.1-08-06, subsection 2 of section 15.1-09-01, subsection 4 of section 15.1-09-05, sections 15.1-09-25, 15.1-09-26, 15.1-09-31, 15.1-09-34, 15.1-09-44, and 15.1-09-50, subsection 9 of section 15.1-12-10, section 15.1-19-09, subsection 7 of section 21-03-07, sections 21-06-12, 25-01.2-13, 34-07-02, and 34-07-15, subsection 5 of section 50-11.1-02, subsection 1 of section 54-07-01.2, sections 54-23.2-04.2, 57-15-14, 57-15-14.2, 57-15-55.1, 57-16-04, and 57-51.1-08, and subsection 1 of section 57-62-02 of the North Dakota Century Code, relating to evidences of indebtedness, correspondence courses, school admission, school district petitions, school district contracts, schoolbuses, military installation school districts, school board member oaths, school board size, school board minutes, fuel purchases, school board powers, reorganization, bond issuances, labor by minors, early childhood services, boards and commissions, vital records, educational foundations, special education, mill levies, education funding, and the coal development trust fund; and to repeal sections 15.1-07-22 and 15.1-09-37 of the North Dakota Century Code, relating to oaths of school district business managers and fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-09.4-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. If the municipal bond bank or a paying agent notifies the superintendent of public instruction, in writing, that a school district has failed to pay when due the principal or interest on any evidences of indebtedness issued after July 31, 1999, or that the bond bank or the paying agent has reason to believe a school district will not be able to make a full payment of the principal and interest when the payment is due, the superintendent of public instruction shall withhold any funds that are due or payable or appropriated to the school district under chapter ~~15-40.4~~ 15.1-27 until the payment of the principal or interest has been made to the bond bank or the paying agent, or until the bond bank or the paying agent notifies the superintendent of public instruction that arrangements satisfactory to the bond bank or the paying agent have been made for the payment of the principal and interest then due and owing. The notification must include information required by the superintendent of public instruction. State funds available to a school district under chapter ~~15-40.4~~ 15.1-27 are not subject to withholding under this

section unless the withholding is authorized by resolution of the district's school board.

SECTION 2. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Public institutions of higher education - Faculty members - Oath or affirmation.

1. Before entering upon the discharge of duties, every faculty member employed by an institution of higher education under the control of the state board of higher education shall take the following oath or affirmation:

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the state of North Dakota, and that I will faithfully discharge the duties of my position, according to the best of my ability.

2. The faculty member shall execute the oath or affirmation in duplicate. One copy of the oath or affirmation must be filed with the state board of higher education. The faculty member shall retain the other copy.

SECTION 3. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Public institutions of higher education - Alien faculty members - Oath or affirmation. Before entering upon the discharge of duties, an individual who is not a citizen of the United States but who is a faculty member employed by an institution of higher education under the control of the state board of higher education shall take an oath or affirmation to support the institutions and policies of the United States during the period of the individual's employment within the state.

SECTION 4. AMENDMENT. Section 15-19-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-19-01. Correspondence courses - Establishment - Enrollment of ~~pupils~~ 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 of public school education as proper and suitable for instruction under correspondence methods, such determination and approval to be made not less than once in each school year, must be maintained upon the campus of one of the state institutions of higher education by the state board of public school education.
2. Unless specifically excused in writing upon the course application forms by the superintendent or an administrator of the school approving the enrollment application, or as provided in subsection 6 all ~~pupils~~ 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, ~~pupils~~ 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 ~~pupils~~ 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 ~~pupils~~ 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.
6. ~~Pupils~~ Students exempt from the compulsory school attendance laws pursuant to subdivision e of subsection 5 1 of section 15-34.1-03 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 a an individual who is licensed teacher 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 ~~parochial~~ nonpublic school.

SECTION 5. AMENDMENT. Section 15-19-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-19-04. Duty of teachers, county and state officers, and institutions.

The state board of public school education and the superintendent or a member of the department of public instruction designated by the superintendent shall approve the content of courses offered, monitor compliance with sections ~~15-41-25 and 15-47-46~~ 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 6. AMENDMENT. Section 15.1-06-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-06-01. Schools free and accessible - School ages.

1. Each public school must be free, open, and accessible at all times to any child provided:
 - a. The child may not enroll in grade one unless the child reaches the age of six before September first of the year of enrollment;

- b. The child may not enroll in kindergarten unless the child reaches the age of five before September first of the year of enrollment; and
 - c. The child has not reached the age of twenty-one before September first of the year of enrollment.
2. Notwithstanding the provisions of subsection 1, a school district may not enroll in grade one a child who is not six years old before September first, unless the child will be six years old before January first and:
 - a. The child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the school district, can demonstrate special talents or abilities; or
 - b. The child has completed an approved kindergarten program.
3. Notwithstanding subsection 1, a school district may not enroll in kindergarten a child who is not five years old before September first unless the child will be five years old before January first and the child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the school district, can demonstrate special talents or abilities.

SECTION 7. AMENDMENT. Section 15.1-07-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-07-02. School district - Name change. In order for the name of a school district to be changed, the question must be placed before and approved by a majority of the district's qualified voters at a district election. The school board may place the question on the ballot by resolution and shall place the question on the ballot if it receives a petition signed by ~~one-third of the~~ qualified electors of the district equal in number to at least one-third of those who voted at the most recent annual school district election. If a majority of the district's qualified voters approve the name change, the district must be renamed accordingly. The business manager of the district shall provide notification of the new name to the county auditor, the county superintendent of schools, and the superintendent of public instruction.

SECTION 8. AMENDMENT. Section 15.1-07-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-07-03. District's limit of indebtedness - Resolution.

1. The board of a school district may by resolution place on the ballot of any regular or special election the question of increasing the district's limit of indebtedness, beyond that fixed by the constitution, by five percent of the assessed valuation of all taxable property in the district.
2. The board of a school district shall place on the ballot of the next regular or special election the question of increasing the district's limit of indebtedness, beyond that fixed by the constitution, by five percent of the assessed valuation of all taxable property in the district, if the board receives a petition requesting the increase and signed by ~~at least one-third of the district's~~ at least one-third of the district's qualified electors of the district equal in number

to at least one-third of those who voted at the most recent annual school district election.

SECTION 9. AMENDMENT. Section 15.1-07-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-07-17. School district contracts - Conflict of interest - Penalty.

1. A school board member or other school officer who has a conflict of interest in any contract requiring the expenditure of school funds shall disclose the conflict to the board and may not participate in any discussions or votes regarding that contract without the consent of all other board members.
2. For purposes of this section, a conflict of interest means the personal, professional, or pecuniary interest of an individual, the individual's spouse or relative, or the individual's business or professional associate.
3. ~~After the disclosure required by subsection 4 has been made, a board may engage in future contracts with the individual for the purchase of goods and services, provided that the amount of a contract does not exceed eight thousand dollars.~~
4. Any person who violates this section is guilty of a class A misdemeanor.

SECTION 10. AMENDMENT. Section 15.1-08-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-08-06. Military installation - School districts - Application of other laws.

1. The duties set forth in section 15.1-09-28 are applicable to the president of a school board governing a military installation school district established under this chapter.
2. The duties set forth in sections 15.1-09-33, 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.
3. The duties set forth in ~~section 15.1-07-22~~ sections 15.1-07-21, 15.1-07-23, and 15.1-07-24 are applicable to ~~a~~ the business manager of a military installation school district established under this chapter.
4. The compensation and expense reimbursement levels set forth in section 15.1-09-06 are applicable to members of a school board governing a military installation school district established under this chapter.
5. Sections 15.1-07-10 through 15.1-07-13, ~~15.1-07-24, and 15.1-07-26~~ and section 15.1-07-25 are applicable to military installation school districts established under this chapter.

SECTION 11. AMENDMENT. Subsection 2 of section 15.1-09-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The size of any school district board may be increased to either five, seven, or nine members or decreased to seven or five members if a petition is signed by ~~at least one-third of the~~ qualified electors of the district equal in number to at least one-third of those who voted at the most recent annual school district election and the change is approved by a majority of the qualified electors of the district voting on the question at a special election called for that purpose.

SECTION 12. AMENDMENT. Subsection 4 of section 15.1-09-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The causes for which a vacancy may be declared include a member's death, refusal to serve, failure to qualify for the office, resignation, removal from office by a court of competent jurisdiction, and relocation to a residence outside the school district.

⁷² **SECTION 13. AMENDMENT.** Section 15.1-09-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-09-25. School board members - Affirmation or oath of office. An individual elected as a member of or appointed to a school board shall take and file with the school district business manager an affirmation or oath of office within ten days after receiving notice of the election or appointment and before commencing duties. If the individual refuses to take the affirmation or oath of office required by this section, the individual's action is deemed to be a refusal to serve and a failure to qualify for the office pursuant to section 44-02-01.

SECTION 14. AMENDMENT. Section 15.1-09-26 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-09-26. Affirmation or oath of office - Administration. ~~An elected~~ Any member of a school board may administer ~~any~~ an affirmation or oath of office required of school board members ~~or,~~ required of school district personnel, or required in any school-related matter.

SECTION 15. AMENDMENT. Section 15.1-09-31 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-09-31. School board proceedings - Publication. Every two years, at the time of a school district's annual election of board members, the electors of the district shall determine whether a record of the board proceedings must be published in the official newspaper of the district. If a majority of the electors voting on the question approve the publication, the school district business manager shall provide for publication of the school board ~~records~~ proceedings, including an itemized list of obligations approved for payment. If ~~applicable~~ appropriate, the business manager

⁷² Section 15.1-09-25 was also amended by section 4 of House Bill No. 1335, chapter 179.

shall ~~request~~ require that the newspaper publishing the board proceedings ~~be identified as being published~~ indicate that the published proceedings are subject to review and revision by the board. The business manager shall ensure that the proceedings are published within a reasonable time after each board meeting. A vote to approve the publication is effective for a period of two years or until disapproved at a succeeding school district election.

SECTION 16. AMENDMENT. Section 15.1-09-34 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-09-34. Contracts by school boards - Bids - Penalty.

1. Except as provided in this section, the board of a school district may not enter a contract involving the expenditure of an aggregate amount greater than twenty-five thousand dollars unless the school board has given ten days' notice by publication in the official newspaper of the district, received sealed bids, and accepted the bid of the lowest responsible bidder. This section does not apply to contracts for:
 - a. The personal services of district employees.
 - b. Textbooks and reference books.
 - c. Articles not sold on the open market.
 - d. Patented, copyrighted, or exclusively sold devices or features required to match articles already in use.
 - e. Patented, copyrighted, or exclusively sold articles so distinctive that only one brand can be purchased.
 - f. Building construction projects under chapters 48-01.1 and 48-02.
 - g. School transportation services purchased under section 15.1-30-11.
 - h. Vehicle fuel purchased under section 17 of this Act.
 - i. Heating fuel purchased under section 17 of this Act.
 - j. The purchase of a used motor vehicle, including a schoolbus, motorbus, or van, intended primarily for the transportation of students.
2. For purposes of this section, a "used motor vehicle" means a motor vehicle that has been previously owned or leased and which has an odometer reading in excess of eighteen thousand miles [28967 kilometers].
3. A board member who participates in a violation of this section is guilty of a class B misdemeanor.

SECTION 17. A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

Vehicle and heating fuel - Purchases. At least once each year, the board of a school district shall publish in the official newspaper of the district information regarding the registration of vehicle fuel vendors and heating fuel vendors. Except as otherwise provided in this section, the board shall purchase vehicle fuel and heating fuel only after seeking written quotes from all vendors who registered with the district for that school year.

SECTION 18. AMENDMENT. Section 15.1-09-44 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-09-44. Schoolbuses - Use of nonprofit organizations. The board of a school district may make a schoolbus available to a nonprofit organization for use in conjunction with the organization's activities. The board shall negotiate the terms of usage with the organization. The terms must address rental charges and insurance coverage. The driver of a schoolbus used by a nonprofit organization under this section must satisfy the requirements for a schoolbus driver set forth in section ~~45.1-07-24~~ 15.1-07-20.

SECTION 19. AMENDMENT. Section 15.1-09-50 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-09-50. Board of education of city of Fargo - Powers. In addition to the powers granted to all school boards by section ~~15.1-09-32~~ 15.1-09-33, the board of education of the city of Fargo has the power and duty:

1. To organize, establish, and maintain schools in the city and to change and discontinue the schools; and to liquidate the assets of discontinued schools outside the district boundaries, as authorized by the state board of public school education.
2. To lease houses or rooms for school purposes, lease lots or sites for schools, and fence real property.
3. To build, enlarge, alter, improve, and repair schools and appurtenances upon lots or sites now owned or leased for school purposes.
4. To provide, sell, exchange, improve, and repair school apparatus, books for indigent students, and appendages.
5. To provide fuel and other supplies for the schools.
6. To have the custody and safekeeping of the schools, books, furniture, and appurtenances and to see that local ordinances regarding schools are observed.
7. To compensate teachers out of the money appropriated and provided by law for the support of the public schools in the city so far as the same is sufficient, and to pay any remainder due from the money raised as authorized by this chapter.
8. To have the control and management of the public schools of the city and from time to time adopt rules for their good order, prosperity, and utility.
9. To prepare and report to the mayor and the city council ordinances and regulations necessary for the protection, safekeeping, and care of the

schools, lots, sites, and appurtenances and all the property belonging to the city, connected with and appertaining to the schools, and to suggest proper penalties for the violation of ordinances and regulations.

⁷³ **SECTION 20. AMENDMENT.** Subsection 9 of section 15.1-12-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. To become effective, a reorganization plan must meet all statutory requirements and must receive approval by both the state board and a majority of electors residing within ~~the boundaries of the proposed new~~ each school district.

SECTION 21. AMENDMENT. Section 15.1-19-09 of the 1999 Supplement to 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 must provide for a procedural due process hearing ~~that allows a~~ before the determination to expel a student is made. A student's parent or representative must be allowed to participate in the 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, ~~or for violating a school district weapons policy;~~ provided the expulsion does not last beyond the termination of the current school year.

SECTION 22. A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

Alcohol or controlled substance - Use or possession by student - Notification of principal. If a teacher knows or has reason to believe that a student is using, is in possession of, or is delivering alcohol or a controlled substance while the student is on school property, involved in a school-related activity, or in attendance at a school-sponsored event, the teacher shall notify the student's principal. This section does not prevent a teacher or any other school employee from reporting to a law enforcement agency any violation of law occurring on school property, at a school-related activity, or at a school-sponsored event.

⁷³ Section 15.1-12-10 was also amended by section 4 of Senate Bill No. 2148, chapter 172.

SECTION 23. AMENDMENT. Subsection 7 of section 21-03-07 of the 1999 Supplement to 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 ~~45-51-11~~, ~~45-51-13~~ 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. 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 24. AMENDMENT. Section 21-06-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-06-12. Use of public funds or property for nonprofit education foundations - Public purposes. Any school district ~~established under chapter 45-47 or a board of education established under chapter 45-51~~ may provide use of public property or in-kind services of personnel to participate in the creation and administration of nonprofit public school education foundations, subject to an annual audit, to receive, manage, invest, and distribute funds or property provided to the foundation by private, or nonschool district governmental entities, if such foundations are established to enhance the mission of the school district by providing facilities or services for recognition of staff and students that are not normally available through the funding of the school district, to administer funds received for education scholarships or endowments established by other entities, to encourage elementary, secondary, and postsecondary education, and to assist in raising, adding, investing, and distributing funds and earnings according to guidelines established by the foundation. The records of a foundation are not subject to audit under section 54-10-14.

SECTION 25. AMENDMENT. Section 25-01.2-13 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-13. Education. Every developmentally disabled child is entitled to a free and appropriate education in the least restrictive appropriate setting in accordance with chapter ~~45-59~~ 15.1-32.

SECTION 26. AMENDMENT. Section 34-07-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-02. Certificate of employment required - Inspection - List of minors employed to be kept. A minor fourteen or fifteen years of age may not be employed or permitted to work in any occupation except farm labor, domestic

service, or in the employment of, and under the direct supervision of, the minor's parent or guardian unless the minor is exempt from compulsory school attendance under subdivisions b, c, and d of subsection 2, 3, or 4 1 of section 15-34.1-03 15.1-20-02 or, unless the minor has an employment certificate signed by the minor's parent or guardian in accordance with the provisions of this chapter. Any person, firm, corporation, or limited liability company employing a minor must keep on file a completed employment certificate, for each minor, as provided in this chapter. The employment certificate must be accessible to inspection by the principal of the school which the minor attends, a principal in the municipality in which the minor resides, or the labor commissioner or the commissioner's agent or representative.

SECTION 27. AMENDMENT. Section 34-07-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-15. Maximum hours of labor of minors fourteen or fifteen years of age - Notice to be posted. A minor fourteen or fifteen years of age may not be employed or permitted to work at any occupation, except in domestic services and at farm labor, before the hour of seven a.m. nor after the hour of seven p.m., except that these hours are seven a.m. to nine p.m. from June first through labor day, nor more than eighteen hours during schoolweeks, nor more than three hours on schooldays, nor more than forty hours during nonschoolweeks, nor more than eight hours on nonschooldays. A schoolweek is considered to be any week Monday through Sunday in which a youth is required to be in attendance, for any period of time, four or more days. Provided, however, that the limitations restricting hours of work during schoolweeks and schooldays do not apply to minors who are not attending school because they are excepted from compulsory school attendance by subdivisions b, c, and d of subsection 2, 3, or 4 1 of section 15-34.1-03 15.1-20-02. Every employer shall post in a conspicuous place where minors are employed, a printed notice stating the hours of work required of the minors each day of the week, the hours of commencing and stopping work, and the hours allowed for dinner or other meals. The printed form of the notice must be furnished by the labor commissioner. The employment of any minor for a longer period than that stated in the notice is a violation of this chapter.

SECTION 28. AMENDMENT. Subsection 5 of section 50-11.1-02 of the North Dakota Century Code is amended and reenacted as follows:

5. "Early childhood services" means the care, supervision, education, or guidance of a child or children, unaccompanied by the child's parent, guardian, or custodian, which is provided in exchange for money, goods, or other services and is, or is anticipated to be, ongoing for periods of two or more hours per day for a part of three or more days per week. Early childhood services does not include:
 - a. Substitute parental child care provided pursuant to chapter 50-11.
 - b. Child care provided in any educational facility, whether public or private, in grade one or above.
 - c. Child care provided in a kindergarten which has been established pursuant to chapter ~~15-45~~ 15.1-22 or a nonpublic elementary school program approved pursuant to subsection 1 of section ~~15-34.1-03~~ 15.1-06-06.

- d. Child care provided to preschool age handicapped children in any educational facility through a program approved by the superintendent of public instruction.
- e. Child care provided in facilities operated in connection with a church, shopping center, business, or other establishment where children are cared for during periods of time not exceeding four continuous hours while the child's parent, guardian, or custodian is attending church services, shopping, or engaged in other activities, other than employment, on or near the premises.
- f. Schools or classes for religious instruction conducted by religious orders during the summer months for not more than two weeks, Sunday schools, weekly catechism, or other classes for religious instruction.
- g. Summer resident or day camps for children which serve no preschool age children for more than two weeks.
- h. Sporting events, practices for sporting events, or sporting or physical activities conducted under the supervision of an adult.
- i. Headstart programs that are federally funded and meet federal headstart standards.
- j. Child care provided by a hospital by medical personnel within the physical structure of the hospital to children who are ill.

⁷⁴ **SECTION 29. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1, 12-55.1-02, 12-59-01, ~~15-38-17~~ 15.1-13-02, 15-39.1-05.1, 15.1-01-01, 15.1-05-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
 - a. The aeronautics commission.
 - b. The milk marketing board.
 - c. The dairy promotion commission.
 - d. The state banking board.

⁷⁴ Section 54-07-01.2 was also amended by section 5 of Senate Bill No. 2251, chapter 501, and section 13 of Senate Bill No. 2424, chapter 503.

- e. The state credit union board.
- f. The advisory board of directors to the Bank of North Dakota.
- g. The pardon advisory board.
- h. The state parole board.
- i. The state board of public school education.
- j. The education standards and practices board and the administrator's professional practices board.
- k. The board of trustees for the teachers' fund for retirement.
- l. The educational telecommunications council.
- m. The state game and fish advisory board.
- n. The health council.
- o. The air pollution control advisory council.
- p. The board of animal health.
- q. The administrative committee on veterans' affairs.
- r. The committee on aging.
- s. The committee on employment of people with disabilities.
- t. The commission on the status of women.
- u. The North Dakota council on the arts.
- v. The state historical board.
- w. The Yellowstone-Missouri-Fort Union commission.
- x. The state water commission.
- y. The state water pollution control board.

SECTION 30. AMENDMENT. Section 54-23.2-04.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.2-04.2. School enrollment procedures to aid identification and location of missing children.

1. When a child enrolls in a public or nonpublic school, licensed day care facility, ~~home-based instruction~~ home education, licensed day care center, licensed child care facility, headstart program, or nursery school for the first time, the school, licensed day care facility, headstart program, or school superintendent of the jurisdiction shall:

- a. Require the child's parent, guardian, or legal custodian to present to the school, licensed day care facility, or school superintendent of the jurisdiction, within forty days of enrollment, proof of identity of the child; and
 - b. Request the appropriate school records for the child from the previous school attended by the child. The school enrolling the child shall make the request within thirty days of enrollment of the child.
2. If a child's parent, guardian, or legal custodian does not present the proof of identity required in subsection 1 within forty days of enrollment or if the school does not receive the school records of the child within sixty days of enrollment, the school, licensed day care facility, or school superintendent of the jurisdiction shall notify the missing person information program provided in section 54-23.2-04.1 and a local law enforcement authority that no proof of identity has been presented for the child.
3. A school shall transfer records or proof of identity of a child within ten calendar days upon receipt of request.
4. When a school, licensed day care facility, or school superintendent receives a notice from a law enforcement authority, parent, guardian, or legal custodian that a child who is or has been enrolled in that school or facility has been reported as a missing child, the school, licensed day care facility, or school superintendent shall:
 - a. Flag the records of the child; and
 - b. Notify the missing person information program provided in section 54-23.2-04.1 and a local law enforcement authority if a request for school records is received from any source.
5. When the division of vital records of the state department of health receives a notice from a law enforcement authority that a person is reported as missing, the division of vital records shall:
 - a. Flag the records of the individual; and
 - b. Notify the missing person information program provided in section 54-23.2-04.1 and a local law enforcement authority if a request for records is received from any source.
6. If it is necessary for law enforcement authorities to conduct an investigation on a missing child, school or day care personnel may not inform the person claiming custody of the child of the investigation while it is being conducted.
7. For purposes of this section:
 - a. "Flag the records" means marking the division of vital records, school, day care, or ~~home-based instruction~~ home education records in such a manner that any personnel viewing that record will be automatically alerted that the child or individual has been reported as missing.

- b. ~~"Home-based instruction" means as applied in chapter 15-34.1.~~ "Home education" means a program of education supervised by a child's parent, in the child's home, in accordance with the requirements of chapter 15.1-23.
- c. "Proof of identity" means a certified copy of a birth certificate, a certified transcript, or similar student records from the previous school, or any other documentary evidence the school, licensed day care facility, or school superintendent considers appropriate proof of identity.
- d. "School" or "licensed day care facility" means all elementary and secondary schools, licensed day care centers, licensed child care facilities, headstart programs, and nursery schools whether public or nonpublic.

SECTION 31. AMENDMENT. Section 57-15-14 of the North Dakota Century Code is amended and reenacted as follows:

57-15-14. Tax levy limitations in school districts. The aggregate amount levied each year for the purposes listed in section 57-15-14.2 by any school district, except the Fargo school district, may not exceed the amount in dollars which the school district levied for the prior school year plus eighteen percent up to a general fund levy of one hundred eighty-five mills on the dollar of the taxable valuation of the district, except that:

1. In any school district having a total population in excess of four thousand according to the last federal decennial census:
 - a. There may be levied any specific number of mills that upon resolution of the school board has been submitted to and approved by a majority of the qualified electors voting upon the question at any regular or special school district election.
 - b. There is no limitation upon the taxes which may be levied if upon resolution of the school board of any such district the removal of the mill levy limitation has been submitted to and approved by a majority of the qualified electors voting at any regular or special election upon such question.
2. In any school district having a total population of less than four thousand, there may be levied any specific number of mills that upon resolution of the school board has been approved by fifty-five percent of the qualified electors voting upon the question at any regular or special school election.
3. In any school district in which the total assessed valuation of property has increased twenty percent or more over the prior year and in which as a result of that increase the school district is entitled to less in state ~~foundation~~ aid payments provided in ~~sections 15-40.1-06 through 15-40.1-08~~ chapter 15.1-27 because of the deduction required in ~~subsection 3 of section 15-40.1-06~~ 15.1-27-05, there may be levied any specific number of mills more in dollars than was levied in the prior year up to a general fund levy of one hundred eighty-five mills on the dollar of the taxable valuation of the school district. The additional levy authorized by this subsection may be levied for not more than two years

because of any twenty percent or greater annual increase in assessed valuation. The total amount of revenue generated in excess of the eighteen percent increase which is otherwise permitted by this section may not exceed the amount of state aid payments lost as a result of applying the deduction provided in ~~subsection 3 of section 15-40.1-06~~ 15.1-27-05 to the increased assessed valuation of the school district in a one-year period.

The question of authorizing or discontinuing such specific number of mills authority or unlimited taxing authority in any school district must be submitted to the qualified electors at the next regular election upon resolution of the school board or upon the filing with the school board of a petition containing the signatures of qualified electors of the district equal in number to twenty percent of the number of persons enumerated in the school census for that district for the most recent year such census was taken, unless such census is greater than four thousand in which case only fifteen percent of the number of persons enumerated in the school census is required. However, not fewer than twenty-five signatures are required unless the district has fewer than twenty-five qualified electors, in which case the petition must be signed by not less than twenty-five percent of the qualified electors of the district. In those districts with fewer than twenty-five qualified electors, the number of qualified electors in the district must be determined by the county superintendent for such county in which such school is located. However, the approval of discontinuing either such authority does not affect the tax levy in the calendar year in which the election is held. The election must be held in the same manner and subject to the same conditions as provided in this section for the first election upon the question of authorizing the mill levy.

SECTION 32. AMENDMENT. Section 57-15-14.2 of the North Dakota Century Code is amended and reenacted as follows:

57-15-14.2. Mill levies requiring board action - Proceeds to general fund account.

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 ~~15-34.2-06~~ 15.1-30-04.
 - b. The teachers' retirement fund as provided in section 15-39.1-28.
 - c. Tuition for students in grades seven through twelve as provided in section ~~15-40.2-12~~ 15.1-29-15.
 - d. Special education program as provided in section ~~15-59-08~~ 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 education programs approved by the state board.
 - l. Maintaining a vocational 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 ~~15-47-40.4~~ 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 education program or its sponsorship of single-district vocational education programs prior to July 1, 1983, and the district discontinues its participation in or sponsorship of those vocational 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.

3. All proceeds of any levy established pursuant to this section must be placed in the school district's general fund account and may be expended to achieve the purposes for which the taxes authorized by this section are levied. Proceeds from levies established pursuant to this section and funds provided to school districts pursuant to chapter ~~15-40-4~~ 15.1-27 may not be transferred to the building fund within the school district.

SECTION 33. AMENDMENT. Section 57-15-55.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-55.1. City tax levy for transportation of public school students.

The governing body of any city, upon approval by a majority vote of the qualified electors of the city voting on the question at any citywide election, may annually levy a tax on the taxable valuation of property within the city to provide funds for fees charged by a school district pursuant to section ~~15-34.2-06.4~~ 15.1-30-05 for transportation for public school students who reside in the city but who attend school in another city in the same school district. A city levying a tax pursuant to this section may levy only so much as will be required to provide an amount representing the difference between the estimated state transportation payment to be received by the school district on behalf of students residing in the city but attending school outside of the city and the estimated actual cost to be incurred by the district in providing transportation for those students.

SECTION 34. AMENDMENT. Section 57-16-04 of the North Dakota Century Code is amended and reenacted as follows:

57-16-04. Increase may be for five years - Extension - Discontinuance.

The governing board of the school district may submit the question of authorizing an excess levy for the current year and not to exceed four succeeding years. The notice of election must give the year or years for which authorization is sought for an excess levy as well as the percentage of excess which is to be voted upon. Prior to the termination of the excess levy, such levy may be extended for a term not to exceed the original term of the increase upon the unanimous approval by the governing board of the school district, and further extensions may be made for the same number of years prior to each termination date upon the unanimous approval of the governing board of the school district. The question of discontinuing such extended excess levy in any school district must be submitted to the qualified electors at the next regular election upon the filing with the school board of a petition containing the signatures of not less than ten percent of the qualified electors of the district as determined by the county superintendent for such county in which such school is located; provided, however, that the approval of discontinuing such extended excess levy does not affect the tax levy in the calendar year in which the election is held. The election must be held in the same manner and subject to the same conditions as provided in section ~~15-27.3-08~~ 15.1-12-11 for elections for approval of school district reorganization proposals.

SECTION 35. AMENDMENT. Section 57-51.1-08 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-08. Intent. It is the intent of the electors of the state of North Dakota and the legislative assembly to fund public elementary and secondary education in North Dakota at the level of seventy percent of the educational cost per student, as

determined under the provisions of chapter ~~45-40.4~~ 15.1-27, to provide funds for the developmental center at westwood park, Grafton, and to provide for water development and utilization and energy conservation and development programs by enactment of an excise tax to be known as the "oil extraction tax" and enactment of an income tax credit.

The legislative assembly has determined that many areas within the state of North Dakota do not have adequate water supplies for municipal, domestic, livestock, light industrial, and other uses. However, adequate water supplies are essential for the social and economic stability of municipalities and rural areas. It is, therefore, declared to be in the best interest of the people of the state of North Dakota to establish a resources trust fund to be used to construct, or assist in the construction of, multiple-use water supply facilities. The legislative assembly also recognizes that appropriate planning to meet current and long-range water needs for the benefit of all of the citizens of the state of North Dakota is a matter of concern and high priority. The legislative assembly further intends that revenues, generated by use of any facilities constructed, in whole or in part, with financing from the resources trust fund, shall be deposited in the resources trust fund.

⁷⁵ **SECTION 36. AMENDMENT.** Subsection 1 of section 57-62-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Fifteen percent must be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 13, chapter 626, 1979 Session Laws must also be deposited in the trust fund created pursuant to this subsection. The fund must be held in trust and administered by the board of university and school lands for loans to coal impacted counties, cities, and school districts as provided in section 57-62-03 and for loans to school districts pursuant to chapter ~~45-60~~ 15.1-36. The board of university and school lands may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the state's general fund. Loan principal payments must be redeposited in the trust fund. The trust fund must be perpetual and held in trust as a replacement for depleted natural resources subject to ~~the provisions of~~ this chapter and chapter ~~45-60~~ 15.1-36.

SECTION 37. REPEAL. Sections 15.1-07-22 and 15.1-09-37 of the North Dakota Century Code are repealed.

Approved April 5, 2001
Filed April 5, 2001

⁷⁵ Section 57-62-02 was also amended by section 13 of Senate Bill No. 2299, chapter 535.

CHAPTER 162

SENATE BILL NO. 2042

(Legislative Council)
(Higher Education Committee)

BOARD OF HIGHER EDUCATION POWERS

AN ACT to amend and reenact sections 15-10-17, 15-11-15, 15-11-32, 15-11-35, 15-11-36, and 15-12-22 of the North Dakota Century Code, relating to the powers and duties of the state board of higher education, state mineral tests, the child welfare research bureau, the fetal alcohol syndrome center, and the economic feasibility institute; and to repeal sections 15-10-14, 15-10-15, 15-10-25, 15-11-03, 15-11-19, 15-11-27, 15-11-28, 15-11-34, 15-12-03, 15-12-04, and 15-13-04 and chapter 47-28 of the North Dakota Century Code, relating to university system faculty, accounts and records, budget requests, expenditure abstracts, patents, university presidents, the university law library, the university radio station, hockey admission receipts, and gifts and grants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-10-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-10-17. Specific powers and duties of the state board of higher education. The state board of higher education has all the powers and shall perform all the duties necessary to the control and management of the institutions described in this chapter; ~~including~~. In addition to the powers and duties specified in section 6 of article VIII of the Constitution of North Dakota, the board may:

1. a. ~~To appoint~~ Appoint and remove the president or other faculty head, and the professors, instructors, teachers, officers, and other employees of the several institutions under its control, and to fix their salaries within the limits of legislative appropriations therefor, and to fix the terms of office and to prescribe the duties thereof, provided that the consideration of the appointment or removal of any such personnel shall be in executive session if the board chooses unless the ~~person or persons~~ individual involved ~~request~~ requests that the meeting ~~shall~~ be open to other ~~persons or individuals~~ or to the public.
- b. Appoint and remove the commissioner of higher education, fix the commissioner's salary within the limits of legislative appropriations, and prescribe the commissioner's duties.
- c. Appoint and remove all university system office personnel, fix their salaries within the limits of legislative appropriations, fix their terms of office, and prescribe their duties.
2. ~~To control the grounds, buildings, and all other property of such institutions, regulate the conduct of students, staff, faculty, and visitors, and authorize~~ Authorize the employment of law enforcement officers;

~~with~~ having concurrent jurisdiction with other law enforcement officers to enforce laws and regulations at its institutions.

3. ~~To adopt rules and regulations for the government of each of the institutions and of all their departments and branches.~~
 4. ~~To determine the qualifications of applicants for admission to the various courses of instruction, to prescribe by rule criteria for the admission of students, and to ensure that the criteria for admission are applied to all applicants in a uniform and nondiscriminatory manner, regardless of the school or educational setting from which an applicant obtained a high school diploma or its equivalent. No instruction, either sectarian in religion or partisan in politics, shall ever be allowed in any department of such institutions, and no sectarian or partisan test shall ever be allowed or exercised in the election of professors, teachers, or other officers of the institutions, or in the admission of students, or for any other purpose.~~
 5. ~~To prescribe courses of instruction and to confer such degrees and grant such certificates or diplomas for the work done as are usual or appropriate in similar institutions.~~
 6. ~~To delegate to institution officers and faculty the power to suspend or expel students for misconduct or for other causes prescribed in such bylaws.~~
 7. ~~To provide for the needs and proper development of each institution in harmony with the best interests of the people of the state, and to improve higher and technical education in the state.~~
 8. ~~To coordinate and correlate the work in the different institutions to prevent wasteful duplication and to develop cooperation among the institutions.~~
 9. ~~To fix Set tuition and fees.~~
 10. ~~To make recommendations in regard to needed legislation for the institutions under its control.~~
44. 4. a. ~~To establish~~ Establish a retirement program as an alternative to chapter 15-39.1 for university system employees of institutions ~~under its control~~ subject to the following guidelines:
- a. (1) Benefits under the program must be provided through annuity contracts purchased by the board but which become the property of the participants;
 - b. (2) The cost of the annuity contracts must be defrayed by contributions made pursuant to rules of the state board of higher education;
 - c. (3) Eligible employees appointed before July 1, 1973, shall participate in the alternate retirement program only by their individual election. When the electing eligible employee is a member of the teachers' fund for retirement, the employee's assessments and employer's contributions together with interest credited at the current rate for one-year certificates

then being paid by the Bank of North Dakota must be transferred to the employee's account in the alternate program. The election must be made before July 1, 1980, and shall relinquish all rights the eligible employee or the employee's beneficiary may have to benefits provided in chapters 15-39 and 15-39.2; and

- d. (4) Employees of ~~institutions under the control of the state board of higher education~~ the university system who are members of the public employees retirement system and who become entitled to participate in the alternate retirement program are entitled to a special annuity purchase in the alternate retirement program in accordance with this subdivision. An eligible employee who consents to have that employee's contribution included is entitled to have that employee's contribution and employer's contribution, with interest, in the public employees retirement system fund, used by the retirement board of the public employees retirement system to purchase for that employee an annuity in the alternate retirement program in lieu of any other rights under the public employees retirement fund. However, before the employer's contribution may be used for an annuity purchase, the employee's combined years of service with the public employees retirement system and the alternate retirement program must equal or exceed the years of service necessary to be eligible for retirement benefits under the public employees retirement system. An employee who transferred from the public employees retirement system before March 30, 1987, and who received a refund of that employee's contribution is entitled to have the employer's contribution, with interest, used to purchase an annuity even if that employee did not purchase an annuity in the alternate employee program with the employee's contribution. If an employee makes the election allowed under this subdivision, that employee relinquishes all rights the employee or any of the employee's beneficiaries may have had to benefits provided under chapter 54-52.

- b. ~~The board shall provide~~ Provide for the administration of the alternate retirement program and establish rules for the program consistent with this subsection. This subsection does not derogate any existing retirement programs approved by the board.

- ~~12.~~ 5. ~~To determine~~ Determine policy for purchasing by the ~~institutions of higher education~~ university system in coordination with the office of management and budget as provided by law.

- ~~13.~~ 6. ~~To establish~~ Establish by rule an early retirement program for faculty and officers of the board as defined by the board. The limitations on severance pay pursuant to section 54-14-04.3 and on requiring the employee to pay contributions to continue on the state uniform group insurance program upon retirement or upon termination of employment pursuant to section 54-52.1-03 ~~shall~~ do not apply to the early retirement program.

14. ~~7.~~ ~~To adopt~~ Adopt rules to protect the confidentiality of student records, medical records, and, consistent with section 44-04-18.4, trade secret, proprietary, commercial, and financial information.
15. ~~8.~~ ~~To authorize~~ Authorize and encourage ~~institutions of higher education under its control~~ university system entities to enter into partnerships, limited liability companies, joint ventures, or other contractual arrangements with private business and industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer.
9. Adopt rules promoting research, encouraging development of intellectual property and other inventions and discoveries by university system employees, and protecting and marketing the inventions and discoveries. The rules must govern ownership or transfer of ownership rights and distribution of income that may be derived from an invention or discovery resulting from research or employment in the university system. The rules may provide for transfer of ownership rights or distribution of income to a private, nonprofit entity created for the support of the university system or one of its institutions.

SECTION 2. AMENDMENT. Section 15-11-15 of the North Dakota Century Code is amended and reenacted as follows:

15-11-15. Tests of state mineral and other resources - Duty of state board of higher education - Bulletins published. The state board of higher education shall provide at the university of North Dakota suitable means for experimentation and practical testing of the mineral and other allied resources of the state in order to demonstrate their fitness for mining and manufacturing industries. ~~The dean of the school of mines shall make, or cause to be made, as rapidly as may be, exhaustive and practical tests of all mineral and allied resources of the state. Investigations and practical tests must be made to obtain a cheap and efficient method of lignite coal briquetting and to show, by actual tests, the best methods of burning lignite, to determine the possibility of utilizing lignite as a gas producing material and for power and lighting, to determine the value of sandstones and other stones for building material, to test clays for tableware, earthenware, stoneware, sewer pipe, and other products, and to make practical tests of other resources as opportunity is afforded. Bulletins may be published from time to time by the school of mines announcing the progress and results of all tests and investigations and giving as much aid as possible relative to the best methods of mining, handling, treating, and manufacturing the various mineral products of the state. A biennial report must be issued.~~

SECTION 3. AMENDMENT. Section 15-11-32 of the North Dakota Century Code is amended and reenacted as follows:

15-11-32. Child welfare research bureau - Establishment - Director.

- ~~4.~~ A child welfare research bureau is hereby established ~~to~~. The bureau must be administered and funded by and in conjunction with the university of North Dakota.
- ~~2.~~ A The university shall appoint a director must be appointed by the university. The director shall manage the bureau, hire necessary personnel, and prepare a biennial budget. The university shall fix the

salaries of the director and bureau personnel, and may remove the director for cause.

SECTION 4. AMENDMENT. Section 15-11-35 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-11-35. Fetal alcohol syndrome center established.

1. There is established ~~in the department of neuroscience~~ at the university of North Dakota school of medicine a fetal alcohol syndrome center.
2. The state board of higher education shall appoint a ~~person from the department of neuroscience~~ as director of the fetal alcohol syndrome program ~~and that person.~~ The director shall prepare an annual report on the status of fetal alcohol syndrome in North Dakota.
3. The fetal alcohol syndrome center shall develop prevention activities in groups that are at high risk for fetal alcohol syndrome. The center may enlist the aid of other agencies, persons, or organizations in its activities.
4. The responsibilities of the fetal alcohol syndrome program include:
 4. ~~a.~~ a. ~~To develop~~ Developing incidence and prevalence data on fetal alcohol syndrome in this state.
 2. ~~b.~~ b. ~~To conduct~~ Conducting research on prevention and management of fetal alcohol syndrome and maternal alcohol ingestion during pregnancy.
 3. ~~c.~~ c. ~~To develop~~ Developing a center for the evaluation of children with fetal alcohol syndrome from this state in cooperation with the child evaluation and treatment program at the ~~medical center rehabilitation hospital~~ at the university of North Dakota medical center and ~~to operate~~ operating followup clinics as funding allows.
 4. ~~d.~~ d. ~~To provide~~ Providing consultation and training across the state on fetal alcohol syndrome.
 5. ~~e.~~ e. ~~To conduct~~ Conducting other activities as may be directed by a state fetal alcohol syndrome task force.
5. The fetal alcohol syndrome center shall coordinate a study of the prevalence of fetal alcohol syndrome in school-age children in this state. The study must review the prevalence of fetal alcohol syndrome in both rural and urban North Dakota communities, including North Dakota Indian reservations.

SECTION 5. AMENDMENT. Section 15-11-36 of the North Dakota Century Code is amended and reenacted as follows:

15-11-36. Evaluation of children with fetal alcohol syndrome. The child evaluation and treatment program at the university of North Dakota ~~medical center rehabilitation hospital~~ shall develop a clinic to provide both initial diagnostic assessment and reevaluation of children with fetal alcohol syndrome. The diagnostic assessment must include a comprehensive multidisciplinary assessment of

psychological, speech and language, educational, occupational therapy, physical therapy, optometric, and audiological evaluations. Reevaluations must be individualized according to a child's needs. The center shall provide consultative services to schools, community agencies, and parents to assist in serving children diagnosed with fetal alcohol syndrome.

SECTION 6. AMENDMENT. Section 15-12-22 of the North Dakota Century Code is amended and reenacted as follows:

15-12-22. Economic feasibility institute - Establishment - Director.

- 1- ~~There is established an~~ economic feasibility institute ~~is established~~ to be administered in conjunction with North Dakota state university of agriculture and applied science.
- 2- The university shall appoint a director of the economic feasibility institute. ~~However, the university shall appoint as the institute's first director the functioning professor in charge of the existing economic feasibility unit within the agricultural economics department of North Dakota state university of agriculture and applied science. The director shall manage the institute, hire and compensate necessary personnel within the limits of legislative appropriations and other funding sources, and prepare a biennial budget. The university shall fix the salary of the director, within the limits of legislative appropriations, and may remove the director for cause.~~

SECTION 7. REPEAL. Sections 15-10-14, 15-10-15, 15-10-25, 15-11-03, 15-11-19, 15-11-27, 15-11-28, 15-11-34, 15-12-03, 15-12-04, and 15-13-04 and chapter 47-28 of the North Dakota Century Code are repealed.

Approved April 24, 2001
Filed April 24, 2001

CHAPTER 163

SENATE BILL NO. 2137

(Appropriations Committee)

(At the request of the State Board of Higher Education)

NDSU BUILDING AND RENOVATION APPROVAL

AN ACT to provide an appropriation and authorization for the construction of a student housing apartment building and for the renovation of Robinson hall on the campus of North Dakota state university; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Construction of student housing on the North Dakota state university campus - Appropriation. The state board of higher education may authorize North Dakota state university to provide for the construction of a student housing apartment building on the university campus. North Dakota state university may utilize any available local funds or funds received from other sources, including fire insurance recovery proceeds resulting from the F court building fire at that campus, for this project. There is appropriated for this project from local funds or other sources the sum of \$2,310,000.

SECTION 2. Renovation of Robinson hall on the North Dakota state university campus - Appropriation. The state board of higher education may authorize North Dakota state university to provide for the renovation of Robinson hall on the university campus. North Dakota state university may utilize any available federal, private, or local funds or funds received from other sources for this project. There is appropriated for this project from available federal, private, or local funds or other funds the sum of \$560,000.

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

Approved January 30, 2001
Filed January 30, 2001

CHAPTER 164

SENATE BILL NO. 2136

(Education Committee)

(At the request of the State Board of Higher Education)

RESIDENT TUITION

AN ACT to amend and reenact subsection 2 of section 15-10-19.1 of the North Dakota Century Code, relating to resident tuition at state institutions of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 15-10-19.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A "resident student" for tuition purposes means:
 - a. A person ~~less than eighteen years of age~~ whose guardian, custodial parent, or parents are legal residents of this state and have resided in this state for twelve months, or a dependent child whose custodial parent moved into the state with the intent to establish legal residency for a period of years within the last twelve months immediately prior to the beginning of the academic term;
 - b. A person of age eighteen or over who is a legal resident of this state and has resided in this state after reaching age eighteen for twelve months immediately prior to the beginning of the academic term;
 - c. A person who graduated from a North Dakota high school ~~within six years of the beginning of the academic term;~~
 - d. A full-time active duty member of the armed forces assigned to a military installation in this state;
 - e. A spouse or dependent of a full-time active duty member of the armed forces assigned to a military installation in this state; ~~a dependent or of an instructor who lives and teaches in~~ employee of any institution of higher education in this state, and a spouse of any other resident for tuition purposes; and
 - f. ~~Any other~~ A person who was a legal resident of this state for at least three consecutive years within six years of the beginning of the academic term.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 165

HOUSE BILL NO. 1283

(Representatives Ekstrom, N. Johnson, Kliniske)
(Senators Every, D. Mathern, Robinson)

TECHNOLOGY OCCUPATIONS STUDENT LOAN PROGRAM

AN ACT to provide for a technology occupations student loan program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Technology occupations student loan program.

1. The state board of higher education shall administer a technology occupations student loan program that encourages college students to pursue technology-based studies, to participate in technology internship programs, and to remain in the state after graduation. The board shall adopt rules to implement the program, including internship requirements, guidelines to determine which technology-related courses of study are eligible under the program, and standards for eligibility.
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;
 - 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.
3. The state board of higher education shall distribute student loan grants directly to the Bank of North Dakota to repay outstanding student loan principal balances for eligible applicants. The maximum student loan grant amount for which an applicant may qualify is one thousand dollars per twelve months of employment for a maximum of five years.

SECTION 2. TECHNOLOGY OCCUPATIONS STUDENT LOAN PROGRAM FUNDING. The funds appropriated in the student grant programs line item included in subdivision 1 of section 1 of Senate Bill No. 2003 of the fifty-seventh legislative assembly, include \$400,000 from the general fund for providing grants as authorized in section 1 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 24, 2001

Filed April 24, 2001

CHAPTER 166

HOUSE BILL NO. 1444

(Representatives R. Kelsch, Delmore, Haas)
(Senators Grindberg, Krebsbach)

STUDENT LOAN FORGIVENESS PROGRAM

AN ACT to provide for a student loan forgiveness program to individuals preparing to teach at grade levels or in content areas having declared teacher shortages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Loans - Teacher shortages - Loan forgiveness.

1. The state board of higher education shall administer a student loan forgiveness program for individuals teaching at grade levels or in content areas identified as having a teacher shortage. The board shall adopt rules to implement the program.
2. The superintendent of public instruction shall annually identify the grade levels and content areas in which a teacher shortage exists.
3. To be eligible for loan forgiveness under this section, an individual:
 - a. Must have been admitted as a full-time student in a teacher preparation program, with the declared intention to teach at a grade level or in a content area identified by the superintendent of public instruction as one in which a teacher shortage exists; and
 - b. Must have obtained a student loan.
4. An individual may receive up to one thousand dollars per year and a maximum of five thousand dollars under this section.
5. The board shall consider all applications under this section in chronological order.
6. Upon notification that the individual has completed a full year of teaching in a school district or nonpublic school in this state at a grade level or in a content area identified by the superintendent of public instruction as one in which a teacher shortage exists, the board shall distribute funds directly to the bank of North Dakota to repay outstanding loan principal balances for eligible applicants.

SECTION 2. STUDENT LOAN FORGIVENESS FUNDING. The funds appropriated in the student grant programs line item included in subdivision 1 of section 1 of Senate Bill No. 2003, include \$250,000 from the general fund for providing loan forgiveness as authorized in section 1 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 26, 2001
Filed April 26, 2001

CHAPTER 167

HOUSE BILL NO. 1068

(Education Committee)

(At the request of the State Board for Vocational and Technical Education)

PRIVATE POSTSECONDARY INSTITUTION AUTHORIZATION

AN ACT to amend and reenact subsection 5 of section 15-20.4-03 and section 15-20.4-05 of the North Dakota Century Code, relating to authorization and incorporation of private postsecondary educational institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 15-20.4-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Receive and cause to be maintained as a permanent file, copies of academic records specified by the board in the event any postsecondary educational institution ~~now or hereafter operating in this state~~ required to have an authorization to operate under this chapter proposes to discontinue its operation.

SECTION 2. AMENDMENT. Section 15-20.4-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-20.4-05. Prohibition. A person, group, or entity of whatever kind, alone or in concert with others, may not:

1. Operate, in this state, a postsecondary educational institution not exempted from the provisions of this chapter, unless said institution has a currently valid authorization to operate issued pursuant to the provisions of this chapter.
2. Instruct or educate, or offer to instruct or educate, including advertising or soliciting for such purpose, enroll or offer to enroll, contract or offer to contract with any person for such purpose, or award any educational credential, or contract with any institution or party to perform any such act, at a facility or location in this state unless such person, group, or entity observes and is in compliance with the minimum standards and criteria established by the board pursuant to subsection 1 of section 15-20.4-03, and the rules and regulations adopted by the board pursuant to subsection 6 of section 15-20.4-03.
3. Use the term "university", "institute", or "college" without authorization to do so from the board.
4. Grant, or offer to grant, educational credentials, without authorization to do so from the board.

5. ~~Seek to incorporate within the state as a postsecondary educational institution without first obtaining a currently valid authorization to operate from the board, which authorization must be presented to the secretary of state upon application for articles of incorporation.~~

Approved March 6, 2001

Filed March 6, 2001

CHAPTER 168

SENATE BILL NO. 2231

(Senators Nething, Wardner)
(Representative N. Johnson)

STUDENT FINANCIAL INSTITUTIONS

AN ACT to create and enact a new subsection to section 15-29-08 of the North Dakota Century Code, relating to authority of school district boards to establish student financial institutions; and to amend and reenact subsection 6 of section 6-01-17.1 of the North Dakota Century Code, relating to application fee for establishment of a separate banking facility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 6-01-17.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. A banking association's application to establish and operate a separate facility, a fee of one thousand five hundred dollars. A banking institution that discontinues a facility established for the purpose of providing educational opportunities to a high school is entitled to a refund of any application fee paid.

SECTION 2. A new subsection to section 15-29-08 of the North Dakota Century Code is created and enacted as follows:

To establish, maintain, and supervise a student financial institution which is not subject to section 6-02-01, 6-02-03, 6-03-67.1, or 6-06-05 or any other statute or rule that regulates banks, other financial institutions, or currency exchanges. To qualify as a student financial institution, the student financial institution must be operated as part of a high school educational program under guidelines adopted by the school board, be advised on a regular basis by one or more state-chartered or federally chartered financial institutions including credit unions, but not owned or operated by a financial institution, be located on school premises and have as customers only students enrolled in, or employees of, the school of which it is located, and have a written commitment from the school board guaranteeing reimbursement of any depositor's funds lost due to insolvency of the student financial institution. Funds of a student financial institution that meet the requirements of this subsection are not school district or other public funds for purposes of any state law governing the use or investment of school district or other public funds. For purposes of borrowing money, cashing checks, and taking deposits concerning the operation of a student financial institution, the obligations of a minor have the same force and effect as though they were the obligations of a person over the age of majority.

CHAPTER 169

HOUSE BILL NO. 1101

(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

TFFR ADMINISTRATION

AN ACT to amend and reenact subsection 4 of section 15-39.1-04, subdivision a of subsection 11 of section 15-39.1-04, and sections 15-39.1-16, 15-39.1-19.1, and 15-39.1-30 of the North Dakota Century Code, relating to definitions, annuities, participation by retired members who have resumed teaching, and confidentiality of records under the teachers' fund for retirement; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 15-39.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Contract" means a written agreement with ~~any~~ a school board or other governing body of ~~any~~ a school district or special education unit of this state or a letter of appointment by a state institution, state agency, or other employer participating in the fund.

SECTION 2. AMENDMENT. Subdivision a of subsection 11 of section 15-39.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. All persons licensed ~~to teach in this state~~ by the education standards and practices board who are contractually employed in teaching, supervisory, administrative, or extracurricular services ~~in any~~ by a state institution or by any, special education unit, school board, or other governing body of any a school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any school district in this state. 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.

SECTION 3. AMENDMENT. Section 15-39.1-16 of the 1999 Supplement to 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 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 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 years of the commencement of annuity payments, the payments must be continued for the remainder of the five-year period to the person as the teacher has nominated by written designation filed with the board.

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.

Option five. Level retirement income with social security option, which is available to teachers retiring before social security is payable.

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 ~~any~~ 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.

⁷⁶ **SECTION 4. AMENDMENT.** Section 15-39.1-19.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-19.1. (Effective after ~~January 29, 2003~~ July 31, 2005) Annuities discontinued on resumption of teaching. 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 ~~sixty~~ thirty calendar days have elapsed from the member's

⁷⁶ Section 15-39.1-19.1 was also amended by section 2 of Senate Bill No. 2180, chapter 170.

retirement date. A retired member may then return to covered employment for a maximum of ~~ninety working days~~ seven hundred hours per year and continue receiving a monthly retirement benefit. ~~For purposes of this section, a working day is four or more hours of teaching.~~ Employment as a substitute teacher does not apply to the seven hundred-hour restriction. The board may waive this restriction in emergency situations.

Should the retired member's employment exceed the ~~ninety-day~~ seven hundred-hour maximum limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office ~~will result~~ 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 ~~ninety-day~~ seven hundred-hour maximum.

~~Any~~ A retired member who returns to teaching shall pay the required assessments on those earnings received by the retired member after the ~~ninety-day~~ seven hundred-hour maximum. The employer shall pay the required contributions in a like manner.

Upon the retired teacher's subsequent retirement, the member's benefit must be resumed as follows:

1. If the teacher subsequently retires with less than two years of additional earned credited service, the teacher's assessments 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. If the teacher subsequently retires with two or more than two 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. 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 from January 29, 2001, through January 29, 2003 July 31, 2005) Annuities discontinued on resumption of teaching.

1. 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 ~~sixty~~ 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 ~~ninety working days~~ seven hundred hours per year and continue receiving a monthly retirement benefit. ~~For purposes of this section, a working day is four or more hours of teaching.~~ Employment as a substitute teacher does not apply to the seven hundred-hour restriction. The board may waive this restriction in emergency situations. Should the retired member's employment exceed the ~~ninety-day~~ seven hundred-hour maximum limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office ~~will result~~ 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 ~~ninety-day~~ seven hundred-hour maximum. A retired member who returns to teaching shall pay the required assessments on those earnings received by the retired member after the ~~ninety-day~~ seven hundred-hour maximum. 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 under this arrangement must be paid by the person's employer. Assessments 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 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 ~~than two~~ 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.

SECTION 5. AMENDMENT. Section 15-39.1-30 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-30. Confidentiality of records. ~~Information pertaining to a teacher's retirement assessments and accumulated interest, disability applications and benefits, and surviving spouse applications and benefits~~ All records relating to the retirement benefits of a member or a beneficiary under this chapter ~~is~~ are confidential and ~~is~~ are not a public ~~record~~ records. The information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the teacher has given written consent to have the information disclosed.
2. A person legally representing the teacher, upon proper proof of representation, and unless the teacher 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, years of age, employer and employee contribution amounts, and salary. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal law. Any information provided to the member's participating employer under this subsection must remain confidential except as provided in subsection 6.
5. The administrative staff of the public employees retirement system for purposes relating to membership and benefits determination.

6. State or federal agencies for the purpose of validating member eligibility or employer compliance with existing state or federal law.
7. Member interest groups approved by the board, limited to information concerning the member's death.

Approved March 26, 2001

Filed March 26, 2001

CHAPTER 170

SENATE BILL NO. 2180

(Senators Holmberg, Freborg, O'Connell)
(Representatives Carlisle, Delmore, R. Kelsch)

RESUMPTION OF TEACHING UNDER TFFR

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to retired teachers returning to teaching under the teachers' fund for retirement; to amend and reenact subsection 1 of section 15-39.1-09 and section 15-39.1-19.1 of the North Dakota Century Code, relating to assessments and resumption of teaching under the teachers' fund for retirement; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15-39.1-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsection 2 of section 15-39.1-10.3, section 3 of this Act, and subsection 3, every teacher is a member of the fund and must be assessed upon the teacher's salary seven and seventy-five hundredths percent per annum, which must be deducted, certified, and paid monthly to the fund by the disbursing official of the governmental body by which the teacher is employed. Every governmental body employing a teacher shall pay to the fund seven and seventy-five hundredths percent per annum of the salary of each teacher employed by it. The disbursing official of the governmental body shall certify the governmental body payments and remit the payments monthly to the fund.

⁷⁷ **SECTION 2. AMENDMENT.** Section 15-39.1-19.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-39.1-19.1. (Contingent effective date and expiration date - See note) Annuities discontinued on resumption of teaching. A Except as otherwise provided in section 3 of this Act, 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 sixty calendar days have elapsed from the member's retirement date. A retired member may then return to covered employment for a maximum of ninety working days and continue receiving a monthly retirement benefit. For purposes of this section, a working day is four or more hours of teaching. The board may waive this restriction in emergency situations.

Should the retired member's employment exceed the ninety-day maximum limit, the retired member must immediately notify the fund office in writing. Failure to

⁷⁷ Section 15-39.1-19.1 was also amended by section 4 of House Bill No. 1101, chapter 169.

notify the fund office will result 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 ninety-day maximum.

Any retired member who returns to teaching shall pay the required assessments on those earnings received by the retired member after the ninety-day maximum. The employer shall pay the required contributions in a like manner.

Upon the teacher's subsequent retirement, the member's benefit must be resumed as follows:

1. If the teacher subsequently retires with less than two years of additional credited service, the teacher's assessments 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 the first day of the month following the teacher's re-retirement.
2. If the teacher subsequently retires with more than two years of additional credited service, the retired person's annuity is 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. The new annuity is payable the first day of the month following the member's re-retirement.

(Contingent effective date and expiration date - See note) Annuities discontinued on resumption of teaching.

1. A Except as otherwise provided in section 3 of this Act, 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 sixty 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 ninety working days and continue receiving a monthly retirement benefit. For purposes of this section, a working day is four or more hours of teaching. The board may waive this restriction in emergency situations. Should the retired member's employment exceed the ninety-day maximum limit, the retired member must immediately notify the fund office in writing. Failure to notify the fund office will result 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 ninety-day maximum. A retired member who returns to teaching shall pay the required assessments on those earnings received by the retired member after the ninety-day maximum. 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 under this arrangement must be paid by the person's employer. Assessments 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 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 credited service, the teacher's assessments 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 the first day of the month following the teacher's re-retirement.
 - b. If the teacher subsequently retires with more than two years of additional credited service, the retired person's annuity is 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. The new annuity is payable the first day of the month following the member's re-retirement.

SECTION 3. A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

Retired teachers return to active service - Critical shortage areas and disciplines - Rules.

1. A retired teacher who is receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits under the provisions of this section or elect to return to teaching under the provisions of section 15-39.1-19.1. To return to teaching under this section, a retired teacher must:
 - a. Return to teach in a critical shortage geographical area or subject discipline as determined by the education standards and practices board by rule; and
 - b. If retired after January 1, 2001, have been receiving a retirement annuity for at least one year. A retired teacher may perform noncontracted substitute teaching duties, but may not engage in full-time or part-time teaching duties during the one-year separation from service.
2. A retired teacher who returns to teaching under this section is not required to pay the employee assessment required by section

15-39.1-09. A retired teacher who returns to teaching under the provisions of this section must be treated as retired for all other purposes under this chapter. A retired teacher may not earn any additional service during the period of reemployment. The retired teacher's benefits may not be adjusted to reflect changes in the retired teacher's age or final average monthly salary at the end of the period of reemployment, any optional form of payment elected under section 15-39.1-16 remains effective during and after the period of reemployment, and additional benefits normally available to an active member, such as disability benefits, are not available to a retired teacher reemployed under this section.

SECTION 4. EXPIRATION DATE. This Act is effective through July 31, 2005, and after that date is ineffective.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 171

HOUSE BILL NO. 1102

(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

TFFR BENEFITS

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to postretirement benefit adjustments under the teachers' fund for retirement; to amend and reenact subsection 2 of section 15-39.1-10 of the North Dakota Century Code, relating to the computation of benefits under the teachers' fund for retirement; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 15-39.1-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The amount of retirement benefits is ~~one and eighty-eight hundredths~~ two percent of the final average monthly salary of the member multiplied by the number of years of credited service. For the purposes of this subsection, final average monthly salary means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three years of service under the fund.

SECTION 2. A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

Postretirement adjustments. An individual who on June 30, 2001, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a monthly increase equal to an amount determined by taking two dollars per month multiplied by the member's number of years of service credit plus one dollar per month multiplied by the number of years since the member's retirement. In addition, an individual who is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a seventy-five hundredths of one percent increase of the individual's current monthly benefit with the increased benefit payable each month thereafter beginning on July 1, 2001. An individual who on June 30, 2002, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive a seventy-five hundredths of one percent increase of the individual's current monthly benefit with the increased benefit payable each month thereafter beginning on July 1, 2002. This annual benefit adjustment is conditioned on an actuarial test performed annually by the board's actuarial consultant to determine the actuarial adequacy of the statutory contribution rate. The board shall report the results of the actuarial test annually to the employee benefits programs committee. If the actuarial valuation indicates a shortfall between the actuarially determined benchmark contribution rate and the statutory rate, the board may reduce or suspend the conditional annual benefit adjustment. The actuarial adequacy test fails if one or more of the following are true:

1. The shortfall is greater than six-tenths of one percent in any year; or
2. The shortfall is greater than three-tenths of one percent in any two consecutive years.

SECTION 3. APPLICATION OF ACT. Section 1 of this Act applies only to individuals who begin receiving benefits from the fund under chapter 15-39.1 after June 30, 2001, and applies to those benefits payable after June 30, 2001. Section 2 of this Act applies to benefits payable after June 30, 2001.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 172

SENATE BILL NO. 2148

(Education Committee)

(At the request of the Department of Public Instruction)

SCHOOL DISTRICTS

AN ACT to amend and reenact sections 15.1-01-03, 15.1-12-05, 15.1-12-09, 15.1-12-10, and 15.1-12-27 of the North Dakota Century Code, relating to school district annexations, reorganizations, and dissolutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-01-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-01-03. State board of public school education - Powers and duties.

1. The state board of public school education shall:
 - ~~4.~~ a. Assist county committees in carrying out their duties.
 - ~~2.~~ b. Provide county committees with clerical assistance, plans of procedure, standards, data, maps, forms, and other materials, information, and services.
 - ~~3.~~ c. Appoint members to the county committee, if the county superintendent does not fulfill this duty, as provided for in section 15.1-10-01.
- ~~4.~~ 2. ~~Adopt~~ The state board of public school education may adopt rules regarding school district reorganizations, annexations, and dissolutions.

SECTION 2. AMENDMENT. Section 15.1-12-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-12-05. Annexation of property to school district - Hearing.

1. Upon receiving a petition for the annexation of property to a school district, the county superintendent shall schedule and give notice of a public hearing regarding the annexation.
2. The county superintendent shall publish notice of the public hearing in the official newspaper of the county in which the major portion of each affected school district's real property is situated, at least fourteen days before the date of the hearing. If no newspaper is published in the county, the county superintendent shall publish the notice in a newspaper in an adjoining county in this state.
3. Before the hearing, the county committee shall:
 - a. Determine the number of qualified electors residing on the property to be annexed;

- b. Ensure that two-thirds of such qualified electors have signed the petition; and
 - c. Ensure that all other statutory requirements regarding the petition have been met.
 4. At the hearing, the county committee shall accept testimony and documentary evidence regarding:
 - a. The value and amount of property held by each affected school district;
 - b. The amount of all outstanding bonded and other indebtedness of each affected district;
 - c. The levies for bonded indebtedness to which the property will be subjected or from which the property will be exempted, as provided for in section 15.1-12-08;
 - d. The taxable valuation of each affected district and the taxable valuation under the proposed annexation;
 - e. The size, geographical features, and boundaries of each affected district;
 - f. The number of students in each affected district;
 - g. The general population of each affected district;
 - h. Each school in the district, including its name, location, condition, the grade levels it offers, and the distance that students living in the petitioned area would have to travel to attend school;
 - i. The location and condition of roads, highways, and natural barriers in each affected district;
 - j. Conditions affecting the welfare of students residing on the property to be annexed;
 - k. The boundaries of other governmental entities;
 - l. The educational needs of communities in each affected district;
 - m. Potential savings in school district transportation and administrative services;
 - n. The potential for a reduction in per student valuation disparity between the affected districts;
 - o. The potential to equalize or increase the educational opportunities for students in each affected district; and
 - p. All other relevant factors.
5. Following consideration of the testimony and documentary evidence presented at the hearing, the committee shall make specific findings of

fact and approve or deny the annexation. If the annexation is approved, the county superintendent shall forward all minutes, records, documentary evidence, and other information regarding the proceeding and the county committee's decision to the state board for final approval of the annexation.

6. a. Except as provided in this subsection, the state board shall conduct a hearing after publication of a notice in the manner required in subsection 2, accept and consider testimony and documentary evidence regarding the proposed annexation, make specific findings, and approve or deny the annexation.
- b. If no opposition is presented to the county committee at the hearing and the county committee approves the annexation, the state board may review the record of the county committee and give final approval to the annexation without holding its own hearing.
7. If the school districts involved in a proposed annexation include property in more than one county, but the major portion of each district's property is in the same county, the county committee of that county shall consider the annexation petition.
8. If the school districts involved in a proposed annexation are situated in more than one county and the major portion of each district's property is not in the same county, the county committees of those counties encompassing the major portion of each school district shall jointly consider the annexation petition. The county committees shall vote separately on whether to approve the annexation.
9. ~~If a county committee denies the annexation, another petition involving any of the same property may not be submitted to the county committee for a period of three months from the date on which the original petition was filed with the county superintendent. A petition involving any of the same property cited in the original petition may not be considered by a county committee more than twice in a twelve-month period.~~
- ~~10.~~ If the state board denies the annexation, another petition involving any of the same property may not be submitted to the county committee for a period of three months after the state board's denial. A petition involving any of the same property cited in the original petition may not be considered by the state board more than twice in a twelve-month period.
- ~~11.~~ 10. Regardless of how many county committees consider the annexation, the decision may be appealed to the state board.
- ~~12.~~ 11. Each annexation must receive final approval from the state board.
- ~~13.~~ 12. The county superintendent with whom the petition has been filed shall forward all minutes, records, documentary evidence, and other information regarding the annexation, and the county committee's decision to the state board for final approval or for consideration of an appeal.
- ~~14.~~ 13. A decision of the state board with respect to an annexation petition may be appealed to the district court of the judicial district in which the property to be annexed is located.

SECTION 3. AMENDMENT. Section 15.1-12-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-12-09. School district reorganization - Initiation of a reorganization plan.

1. In order for two or more contiguous school districts or contiguous portions of two or more school districts to initiate a reorganization process, the board of each participating school district must:
 - ~~1-~~ a. Vote to pursue the reorganization;
 - ~~2-~~ b. Prepare a reorganization plan;
 - ~~3-~~ c. Approve the reorganization plan; and
 - ~~4-~~ d. Submit the plan to the county superintendent having jurisdiction over the major portion of property in each participating school district.
2. Submission of a reorganization plan to the county superintendent after July 31, 2001:
 - a. Renders an annexation petition involving any real property that is included in the reorganization plan void, unless the annexation has already been approved by the state board; and
 - b. Prohibits the acceptance of a new annexation petition involving any real property that is included in the reorganization plan, until all reorganization proceedings have been completed.

⁷⁸ **SECTION 4. AMENDMENT.** Section 15.1-12-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-12-10. School district reorganization - Contents of plan - Public hearing - Testimony and evidence.

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;

⁷⁸ Section 15.1-12-10 was also amended by section 20 of House Bill No. 1046, chapter 161.

- 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 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.
2. Upon receiving a reorganization plan, the county superintendent shall schedule and give notice of a public hearing regarding the plan. If the school districts involved in a reorganization plan include property in more than one county, but the major portion of each district's property is in the same county, the county committee of that county shall consider the reorganization plan. If the school districts involved in a reorganization plan are situated in more than one county and the major portion of each district's property is not in the same county, the county committees of those counties encompassing the major portion of each school district shall jointly consider the reorganization plan.

3. The county superintendent shall publish the notice in the official newspaper of the county at least fourteen days before the date of the hearing.
4. If no newspaper is published in the county, the county superintendent shall publish the notice in the official newspaper of an adjoining county in this state.
5. Before the hearing, the county committee shall review the reorganization plan and ensure that all statutory requirements have been met.
6. At the hearing, the county committee shall accept testimony and documentary evidence regarding the reorganization plan.
7. Following consideration of the testimony and documentary evidence presented at the hearing, the committee shall approve or deny the reorganization plan.
8. If the plan is approved by at least one county committee, the county superintendent shall forward all minutes, records, documentary evidence, and other information regarding the proceeding, and the county committee's decision, to the state board for final approval. The state board shall publish notice of its meeting at which it will consider the reorganization plan in the official newspaper of the county at least fourteen days before the date of the meeting. If no newspaper is published in the county, the state board shall publish the notice in the official newspaper of an adjoining county in this state.
9. To become effective, a reorganization plan must meet all statutory requirements and must receive approval by both the state board and a majority of electors residing within the boundaries of the proposed new district.

SECTION 5. AMENDMENT. Section 15.1-12-27 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-12-27. Dissolution of school district - Notice - Hearing - Order of attachment.

1. The county superintendent shall schedule and give notice of a public hearing regarding the dissolution of the district and the subsequent attachment of the property to other districts. The county superintendent shall publish the notice in the official newspaper of each county that encompasses property in the dissolving district and in the official newspaper of each county that encompasses property in a district adjacent to the dissolving district, at least fourteen days before the date of the hearing. The county superintendent shall provide notice of the public hearing to the business manager of each school district adjacent to the dissolving district.
2. At the hearing, the board of the dissolving district may propose a particular manner of dissolution.
3. The county committee shall consider testimony and documentary evidence regarding:

- a. The value and amount of property held by the dissolving school district;
 - b. The amount of all outstanding bonded and other indebtedness;
 - c. The distribution of property and assets among the districts to which the dissolved district is attached;
 - d. The taxable valuation of the dissolving district and adjacent districts and the taxable valuation of adjacent districts under the proposed manner of dissolution;
 - e. The size, geographical features, and boundaries of the dissolving district and of adjacent districts;
 - f. The number of students in the dissolving district and in adjacent districts;
 - g. The general population of the dissolving district and adjacent districts;
 - h. Each school in the dissolving district and in adjacent districts, including its name, location, condition, accessibility, and the grade levels it offers;
 - i. The location and condition of roads, highways, and natural barriers in the dissolving district and in adjacent districts;
 - j. Conditions affecting the welfare of students in the dissolving district and in adjacent districts;
 - k. The boundaries of other governmental entities;
 - l. The educational needs of communities in the dissolving district and in adjacent districts;
 - m. Potential savings in school district transportation and administrative services;
 - n. The anticipated future use of the dissolving districts' buildings, sites, and playfields;
 - o. The potential for a reduction in per student valuation disparities between the districts to which the dissolved district is attached;
 - p. The potential to equalize or increase the educational opportunities for students from the dissolving district and for students in adjacent districts; and
 - q. All other relevant factors.
4. After the hearing, the county committee shall make findings of fact. Subject to final approval by the state board, the county committee may order the district dissolved and its real property attached to one or more contiguous, operating school districts.

5. Any property ordered attached under this section must have at least one minor residing within its boundaries.
6. The county superintendent shall forward all minutes, records, documentary evidence, and other information regarding the dissolution proceeding together with a copy of the county committee's order to the state board for final approval of the dissolution. The state board shall publish notice of its meeting at which it will consider the dissolution, in the official newspapers of the counties required for publication under subsection 1, at least fourteen days before the meeting.
7. The order of dissolution becomes effective July first following approval by the state board, unless the county committee provides for a different effective date.
8. If the boundaries of the dissolving school district cross county lines, the proceeding to dissolve the district must be conducted jointly by the county committees representing counties containing twenty-five percent or more of the dissolving district's taxable valuation. If, after the hearing, a majority of the county committees are unable to agree upon an order of dissolution and attachment, the county superintendent of the county in which the administrative headquarters of the dissolving school district is located shall notify the state board. The state board shall conduct a public hearing, as required in this section, and order the dissolution of the district and the attachment of its real property to adjacent districts in the manner it deems appropriate. The state board shall publish notice of the public hearing in the official newspapers of the counties required for publication under subsection 1, at least fourteen days before the date of the hearing.
9. If any portion of the order providing for the attachment of real property is suspended or voided, the order of dissolution is likewise suspended or voided.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 173

HOUSE BILL NO. 1344

(Representatives R. Kelsch, Brusegaard, Monson)
(Senators Krebsbach, Wardner)

TEACHER COMPENSATION AND PER STUDENT PAYMENTS

AN ACT to provide contingent payments for declining enrollment and the distribution of differing payment amounts; to create and enact four new sections to chapter 15-40.1 and one new section to chapter 15.1-02 of the North Dakota Century Code or in the alternative to create and enact four new sections to chapter 15.1-27 of the North Dakota Century Code, relating to the compensation of teachers and a school district compensation report; to amend and reenact sections 15-40.1-06 and 57-15-27 of the North Dakota Century Code or in the alternative to amend and reenact sections 15.1-27-04 and 15.1-27-05 of the North Dakota Century Code, relating to per student payments and ending fund balances; to provide legislative intent; to provide for a legislative council study; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-40.1-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-06. Declaration of legislative intent - Educational support per student - School district equalization factor - Limitations.

1. It is the intent of the legislative assembly to support elementary and secondary education in this state from state funds. For purposes of this section, state funds include all appropriations for foundation aid, tuition apportionment, supplemental per student payments, special education, vocational education, transportation aid, school district technology, the governor's school, teacher centers, and the leadership in educational administration development consortium. For purposes of distributing state funds, the superintendent of public instruction shall determine the educational cost per student. In determining the educational cost per student, the superintendent may not use:
 - a. Expenditures for capital outlay for buildings and sites, or debt service.
 - b. Expenditures from school activities and school lunch programs.
 - c. Expenditures for the cost of transportation, including the cost of schoolbuses.
2. a. The educational support per student ~~during~~ for the first year of the ~~1999-2004~~ 2001-03 biennium ~~must be~~ is ~~two thousand one hundred forty-five~~ two thousand one hundred eighty-seven dollars ~~and~~ and The educational

support per student for the second year of the ~~1999-2001~~ 2001-03 biennium ~~the educational support per student must be~~ is ~~two thousand two hundred thirty four~~ two thousand three hundred thirty four ~~and~~ and. The educational support per student is the basis for calculating grants-in-aid on a per student basis as provided in sections 15-40.1-07 and 15-40.1-08.

- b. School districts operating high schools not meeting the minimum curriculum as provided in section 15-41-24 or the teacher qualifications in section 15-41-25 must be supported in the amount of two hundred twenty dollars, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-07.
 - c. School districts operating high schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1991, or that become unaccredited in any succeeding school year must be supported for the first year that they become unaccredited in the amount of the educational support per student established in subdivision a, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-07, but those school districts are not entitled to the amounts resulting from applying the factors in that section. The amount of aid a school district is entitled to under this subsection for each high school that is not accredited must be reduced by two hundred dollars times the number of students in the school for the second school year that the high school is unaccredited, and an additional two hundred dollars per student in the unaccredited school for each additional year the school remains unaccredited. Any high school that becomes accredited is entitled to the per student payments provided for in section 15-40.1-07 for the entire school year in which the school becomes accredited.
 - d. School districts operating elementary schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1992, or that become unaccredited in any succeeding school year must be supported for the first year that they become unaccredited in the amount of the educational support per student established in subdivision a, which is the basis for calculating grants-in-aid on a per student basis as provided in section 15-40.1-08, except that the amount of aid that a school district is entitled to under this subsection for each elementary school that is unaccredited must be reduced by two hundred dollars times the number of students in the school each year that the elementary school is unaccredited. Any elementary school that becomes accredited is entitled to the per student payments provided for in section 15-40.1-08 for the entire school year in which the school becomes accredited.
3. In determining the amount of payments due a school districts for tuition apportionment provided in section 15-44-03, and per student aid under this section, the amount of district, the superintendent of public instruction shall add the tuition apportionment, foundation aid payments, per student payments, special education aid, and transportation aid, and teacher compensation payments for which a school district is

eligible ~~must be added together~~, and from that total, subtract the following ~~amounts must be subtracted~~:

- a. The product of thirty-two mills times the latest available net assessed and equalized valuation of property of the school district.
 - b. The amount that the unobligated general fund balance of a school district on the preceding June thirtieth is in excess of ~~three-fourths~~ fifty percent of the its actual expenditures, plus ~~an additional~~ twenty thousand dollars.
4. No school district may receive foundation payments beyond the October payment unless the following reports have been filed with the superintendent of public instruction:
- a. Annual average daily membership report.
 - b. Annual school district financial report.
 - c. The September tenth fall enrollment report.
 - d. The personnel report forms for certified and noncertified employees.
5. No school district may receive the January foundation payment unless the taxable valuation and mill levy certifications are on file with the department of public instruction by December fifteenth.

SECTION 2. If House Bill No. 1045 does not become effective, a new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Definitions. For purposes of sections 3 through 5 of this Act:

1. "Compensation" includes all salaries, benefits, commissions, memberships, the provision of housing, the provision of vehicles, and any other payments, in lieu of payments, or services, reportable as gross income under the Internal Revenue Code.
2. "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:
 - a. A class 22 coordinator;
 - b. A class 37 guidance counselor or school counselor;
 - c. A class 38 guidance counselor 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 3. If House Bill No. 1045 does not become effective, a new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

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 15-38.1, 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 compensation of teachers employed by the district.
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 school year; and
 - c. The total amount of the increase in compensation.
3.
 - a. For the 2001-02 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, 2001.
 - 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.
 - c. For the 2002-03 school year, the reimbursement under this section for each individual employed as of September 15, 2002, 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 4. If House Bill No. 1045 does not become effective, a new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Compensation of teachers - Distribution of reimbursement. The superintendent of public instruction shall distribute approximately one-sixth of the total amount to which each school district is entitled under section 3 of this Act on or before the first day of each November, December, January, February, March, and May.

SECTION 5. If House Bill No. 1045 does not become effective, a new section to chapter 15-40.1 of the North Dakota Century Code is created and enacted as follows:

Annual salary - Minimum amount. Beginning with the 2001-02 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 salary level for the contract period equal to at least eighteen thousand five hundred dollars. Beginning with the 2002-03 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 salary level for the contract period equal to at least twenty thousand dollars.

SECTION 6. A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

School district employee compensation report.

1. Before September eleventh of each year, beginning in 2002, each school district shall provide the following information to the superintendent of public instruction, with respect to teachers and with respect to 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.
2. The superintendent of public instruction shall:

- a. Compile the information required by subsection 1 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.
 - b. Forward a copy of the compiled information to the governor and the chairman of the legislative council.
3. 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. 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 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 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.

⁷⁹ **SECTION 7. AMENDMENT.** Section 15.1-27-04 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, 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 ~~one~~ two hundred ~~forty-five~~ eighty-seven dollars. The per student payment to which each school district is entitled for the second year of the biennium is two thousand ~~two~~ three hundred ~~thirty~~ forty-seven 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.

⁸⁰ **SECTION 8. AMENDMENT.** Section 15.1-27-05 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

15.1-27-05. 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, ~~and~~ 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 mills times the latest available net assessed and equalized valuation of property in the district.
2. The amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of ~~seventy-five~~ fifty percent of its actual expenditures, plus twenty thousand dollars.

SECTION 9. A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

Definitions. For purposes of sections 10 through 12 of this Act:

1. "Compensation" includes all salaries, benefits, commissions, memberships, the provision of housing, the provision of vehicles, and any other payments, in lieu of payments, or services, reportable as gross income under the Internal Revenue Code.
2. "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:
 - a. A class 22 coordinator;
 - b. A class 37 guidance counselor or school counselor;

⁷⁹ Section 15.1-27-04 was created by section 11 of House Bill No. 1045, chapter 181.

⁸⁰ Section 15.1-27-05 was created by section 11 of House Bill No. 1045, chapter 181.

- c. A class 38 guidance counselor 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 10. A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

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 compensation of teachers employed by the district.
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 school year; and
 - c. The total amount of the increase in compensation.
3.
 - a. For the 2001-02 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, 2001.
 - 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.
 - c. For the 2002-03 school year, the reimbursement under this section for each individual employed as of September 15, 2002, 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 11. A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

Compensation of teachers - Distribution of reimbursements. The superintendent of public instruction shall distribute approximately one-sixth of the total amount to which each school district is entitled under section 10 of this Act on or before the first day of each November, December, January, February, March, and May.

SECTION 12. A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

Annual salary - Minimum amount. Beginning with the 2001-02 school year, the board of each school district shall provide to each full-time teacher, under contract for a period of nine months, a level of salary for the contract period equal to at least eighteen thousand five hundred dollars. Beginning with the 2002-03 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 salary level for the contract period equal to at least twenty thousand dollars.

SECTION 13. AMENDMENT. Section 57-15-27 of the North Dakota Century Code is amended and reenacted as follows:

57-15-27. Interim fund. The governing body of any county, city, ~~school district,~~ park district, or ~~other~~ municipality, other than a school district, which is authorized to levy taxes may include in its budget an item to be known as the "interim fund" which must be carried over to the next ensuing fiscal year to meet the cash requirements of all funds or purposes to which the credit of the municipality may be legally extended, for that portion of such fiscal year prior to the receipt of taxes therein. In no case may ~~such~~ the interim fund be in excess of the amount reasonably required to finance the municipality for the first nine months of the next ensuing fiscal year. ~~Such~~ The interim fund may not be in excess of three-fourths of the current annual appropriation for all purposes other than debt retirement purposes and appropriations financed from bond sources ~~and, for school districts, an additional twenty thousand dollars.~~

SECTION 14. CONTINGENT PAYMENT - DECLINING ENROLLMENT.

1. If the superintendent of public instruction determines that the portion of the grants-foundation aid and transportation line item designated for per student payments in House Bill No. 1013, as approved by the fifty-seventh legislative assembly, exceeds the estimated expenditure for per student payments during the first year of the 2001-03 biennium by an amount sufficient to provide for a distribution of one hundred fifty dollars times the number of students by which each district's 2000-01

fall enrollment is less than the district's 1997-98 fall enrollment, the superintendent shall distribute one hundred fifty dollars times the number of students by which a district's 2000-01 fall enrollment is less than that district's 1997-98 fall enrollment.

2. If the superintendent of public instruction determines that the portion of the grants-foundation aid and transportation line item designated for per student payments in House Bill No. 1013, as approved by the fifty-seventh legislative assembly, does not exceed the estimated expenditure for per student payments during the first year of the 2001-03 biennium by the amount required for a payment under subsection 1, the superintendent may not distribute any amounts under subsection 1.
3. If the superintendent of public instruction determines that the portion of the grants-foundation aid and transportation line item designated for per student payments in House Bill No. 1013, as approved by the fifty-seventh legislative assembly, exceeds the estimated expenditure for per student payments during the second year of the 2001-03 biennium, the superintendent shall distribute two hundred fifty dollars times the number of students by which a district's 2000-01 fall enrollment is less than that district's 1997-98 fall enrollment, or a lesser proportionate amount if the amount available is insufficient to provide for a distribution of two hundred fifty dollars times the number of students by which each district's 2000-01 fall enrollment is less than the district's 1997-98 fall enrollment.
4. No school district may receive payments for declining enrollments in excess of four hundred students under this section.
5. During the 2001-03 biennium, no school district may receive more than two hundred fifty dollars times the number of students by which the district's 2000-01 fall enrollment is less than that district's 1997-98 fall enrollment.

SECTION 15. DISTRIBUTION OF DIFFERENCE IN PAYMENT AMOUNTS - HOLD HARMLESS - CONTINGENT PAYMENTS.

1. a. If funds appropriated by the legislative assembly to the grants-foundation aid and transportation line item in House Bill No. 1013, as approved by the fifty-seventh legislative assembly, remain after completion of all statutory obligations, including the payment of funds for declining enrollment under section 14 of this Act, to the extent of legislative appropriations, the superintendent of public instruction shall:
 - (1) Calculate the payment to which a school district is entitled during the 2001-03 biennium under this Act; and
 - (2) Calculate the payment to which a school district would have been entitled during the 2001-03 biennium under this Act if the per student payment established in section 15-40.1-06 or section 7 of this Act for the first year of the biennium were two thousand four hundred thirty-nine dollars and for the second year of the biennium were two thousand five

hundred two dollars and if no level of teacher compensation were established in this Act.

- b. If the amount to which a school district is entitled during the biennium under this Act does not exceed the amount to which a school district would have been entitled under the parameters of subsection 2, the superintendent of public instruction shall forward the difference between the amounts to the school district on or before June 30, 2003.
 - c. The superintendent may distribute up to \$2,000,000 of such contingent funds as hold harmless payments under this subsection. If insufficient funds exist to provide payments under this subsection, the superintendent shall prorate the amount to which the districts are entitled.
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 the remaining funds as additional per student payments under chapter 15-40.1 or 15.1-27.
 3. If funds appropriated by the legislative assembly to the grants-foundation aid and transportation 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 the remaining funds as additional per student payments under chapter 15-40.1 or 15.1-27.

SECTION 16. APPROPRIATION - GRANTS FOR NATIONAL TEACHER CERTIFICATION.

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$41,500, or so much of the sum as may be necessary, to the education standards and practices board for the purpose of making grants to assist teachers in obtaining national certification, for the biennium beginning July 1, 2001, and ending June 30, 2003.
2. 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 may file an application with the board for a grant to assist with the cost of obtaining national teacher certification after July 1, 2001.
3. The education standards and practices board shall review each application chronologically.
4. A successful applicant is eligible to receive a grant in the amount of \$1,150 to assist with the assessment costs of national teacher certification.

5. At the conclusion of each of the first four full school years after the individual obtains the national teacher certification, the individual is entitled to receive an additional \$1,500, if:
 - a. The individual served during the school year as a full-time classroom teacher in a public school in this state; and
 - b. The individual participated in any efforts of the employing school district to develop and implement teacher mentoring programs and teacher evaluation programs.

SECTION 17. TEACHER COMPENSATION PACKAGE - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying the feasibility and desirability of implementing a teacher compensation package that recognizes four levels of teachers from beginning to advanced and which bases the compensation level for each category on the individual teacher's ability to meet or exceed district standards for content knowledge, planning and preparation for instruction, instructional delivery, student assessment, classroom management, and professional responsibility. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 18. LEGISLATIVE INTENT - GOALS OF SCHOOL DISTRICT REORGANIZATION. It is the intent of the fifty-seventh legislative assembly that each reorganization of school districts result in a newly formed district that has long-term sustainability from a demographic and fiscal perspective and that can offer to current students and to students in the foreseeable future academic integrity and educational opportunities designed to enhance the students' natural talents and curiosities and ultimately enhance their lives, their career choices, and their ability to contribute to the society in which they find themselves as adults. It is the further intent of the fifty-seventh legislative assembly that the state board of public school education maintain cognizance of the fact that meeting these goals requires school districts participating in a reorganization to include at least one district that offers educational services to all its students from kindergarten through grade twelve and consists of a student population equaling at least two hundred twenty-five.

SECTION 19. APPROPRIATION - SCHOOL DISTRICT COMPENSATION REPORT. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of developing and implementing a school district employee compensation report as provided in section 6 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 20. EFFECTIVE DATE. Subdivision b of subsection 3 of section 15-40.1-06 of the North Dakota Century Code as amended by section 1 of this Act, subsection 2 of section 15.1-27-05 of the North Dakota Century Code as amended by section 8 of this Act, and section 13 of this Act become effective on July 1, 2004.

Approved April 30, 2001
Filed April 30, 2001

CHAPTER 174

HOUSE BILL NO. 1058

(Representatives Byerly, R. Kelsch, Monson)
(Senators Fischer, Kringstad, Lyson)

DUPLICATIVE PAYMENTS TRANSFER

AN ACT relating to the transfer of duplicative payments received by the superintendent of public instruction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Duplicative payments - Transfer - Distribution - Report to budget section. If the superintendent of public instruction receives any federal or other moneys to pay programmatic administrative expenses for which the superintendent received a state general fund appropriation, the superintendent shall transfer the moneys to the state tuition fund. This section does not apply if the superintendent is required by federal law or by the terms of a grant to employ additional personnel. The superintendent shall report annually to the budget section of the legislative council regarding any transfers under this section.

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 175

SENATE BILL NO. 2166

(Education Committee)

(At the request of the Department of Public Instruction)

SCHOOL INSTRUCTIONAL DAYS

AN ACT to create and enact section 15.1-06-08.1 of the North Dakota Century Code, relating to the waiver of statutes; and to amend and reenact sections 15.1-06-05 and 15.1-06-08 of the North Dakota Century Code, relating to the reconfiguration of instructional days and the waiver of accreditation rules.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-06-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-06-05. School calendar - Modification Instructional days - Reconfiguration - Application. ~~A school district may apply to the superintendent of public instruction for approval of a pilot program in which the district's school calendar is reduced below one hundred eighty days.~~

1. ~~The superintendent may approve an application for a pilot program if:~~
 - a. ~~It allows the district to evaluate the modifications in the traditional school calendar from the perspective of increased school facility use; and~~
 - b. ~~In the opinion of the superintendent, the program offers educational opportunities equivalent to those available in a one-hundred-eighty-day school calendar.~~
2. ~~A district submitting an application under this section shall specify:~~
 - a. ~~The minimum number of days students will attend school; and~~
 - b. ~~The comparable instructional time.~~
3. ~~A school district may apply to the superintendent of public instruction for permission to reconfigure the number of instructional days required by section 15.1-06-04.~~
2. The superintendent of public instruction may approve an application under subsection 1 only if the reconfiguration of the required number of instructional days:
 - a. (1) Makes available to each of the school district's elementary students at least nine hundred fifty-one and one-half hours of instructional time and makes available to each of the district's high school students at least one thousand thirty-eight hours of instructional time; and

- (2) Does not reduce the hours of instructional time below the level made available to elementary students and high school students, respectively, by the school district during the last school year completed prior to the date of the application; and
 - b. (1) Encourages innovation;
 - (2) Provides improved educational opportunities or enhanced academic opportunities for the students;
 - (3) Provides for greater flexibility in the use of a school by current students;
 - (4) Provides for greater flexibility in the use of a school by individuals or groups other than current students; or
 - (5) Results in significant cost-savings to the district.
3. A reconfiguration of instructional days approved by the superintendent of public instruction under this section is valid for one school year. A school district may apply to the superintendent for permission to extend the reconfiguration of instructional days for one additional year.
 4. If the superintendent of public instruction approves a district's application for reconfiguration of instructional time under this section, the district is eligible to receive the per student payments provided under chapter ~~15.1-28~~ 15.1-27.
 4. ~~A district that operates an approved pilot program under this section for a period of three years may apply to the superintendent for permanent approval of the program.~~
 5. The superintendent of public instruction shall adopt rules governing the submission and evaluation of applications; ~~the evaluation of proposals, and any other matters necessary for the administration of pilot programs and the monitoring of any school or school district that receives a waiver~~ under this section.
 6. A ~~pilot program~~ reconfiguration of instructional days approved by the superintendent of public instruction under this section satisfies the requirements for school operation and instructional time required by law.
 7. A ~~pilot program~~ reconfiguration of instructional days approved by the superintendent of public instruction under this section does not affect the accrual of teachers' benefits provided by law.

SECTION 2. AMENDMENT. Section 15.1-06-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-06-08. ~~Conditions~~ Rules for school accreditation and approval - Waiver. ~~The~~

1. A school or school district may apply to the superintendent of public instruction ~~may waive any condition~~ for a waiver of any rule governing

the accreditation and approval for a reasonable period of time of schools, provided the waiver encourages:

- a. Encourages innovation; permits experimentation; and has
 - b. Has the potential to result in an improved program. The superintendent may waive the conditions only with the concurrence of a majority of a waiver committee composed of one member appointed by the North Dakota education association, one member appointed by the North Dakota council of educational leaders, and one member appointed by the North Dakota school boards association educational opportunities or enhanced academic opportunities for the students.
2. The initial waiver must be for a specific period of time, but may not exceed one year. A school or a school district for which a waiver has been approved under this section, may apply for one extension of the waiver. The extension may not exceed one year.
 3. If the superintendent of public instruction, after receipt and consideration of an application for a waiver of a rule governing the accreditation of schools under this section approves the waiver, the superintendent shall file a report with a committee designated by the legislative council. The report must cite the accreditation rule that was waived, provide a detailed account of the reasons for which the rule was waived, and state the time period for which the rule was waived. If the superintendent of public instruction denies an application for a waiver under this section, the superintendent shall file a notice of denial with the committee designated by the legislative council. If requested by the chairman of the committee, the superintendent shall appear before the committee and respond to questions regarding the approval or denial of any application for a waiver.
 4. Any waiver granted by the superintendent of public instruction prior to the effective date of this Act is void as of the effective date of this Act. Any school or school district operating under a waiver granted by the superintendent prior to the effective date of this Act may apply for a new waiver under this Act.

SECTION 3. Section 15.1-06-08.1 of the North Dakota Century Code is created and enacted as follows:

15.1-06-08.1. Statutes - Waiver.

1. The superintendent of public instruction may not waive any statute, in whole or in part, except as provided for in this section.
2. A school or school district may apply to the superintendent of public instruction for a waiver of section 15.1-21-03, provided the waiver:
 - a. Encourages innovation; and
 - b. Has the potential to result in improved educational opportunities or enhanced academic opportunities for the students.

3. The initial waiver must be for a specific period of time but may not exceed one year. The school district may apply for extensions of the waiver. The first extension may not exceed a period of one year. Additional extensions may not exceed periods of two years.
4. If the superintendent of public instruction, after receipt and consideration of an application for a waiver under this section, approves the waiver, the superintendent shall file a report with a committee designated by the legislative council. The report must provide a detailed account of the reasons for which the waiver was granted and the specific time period for the waiver. If the superintendent of public instruction denies an application for a waiver under this section, the superintendent shall file a notice of denial with the committee designated by the legislative council. If requested by the chairman of the committee, the superintendent shall appear before the committee and respond to questions regarding the approval or denial of any application for a waiver under this section.
5. The superintendent of public instruction shall adopt rules governing the submission and evaluation of applications and the monitoring of any school or school district that receives a waiver under this section.

Approved April 27, 2001
Filed April 27, 2001

CHAPTER 176

SENATE BILL NO. 2177

(Senators Lyson, Kringstad)
(Representatives Carlisle, Drovdal, Rennerfeldt)

RELIGIOUS OBJECT 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 religious objects or documents in public school buildings.

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:

Religious objects or documents - Display. A religious object or document of cultural, legal, or historical significance which has influenced the legal and governmental systems of the United States and this state may be displayed in a public school building together with other objects or documents of cultural, legal, or historical significance, which have influenced the legal and governmental systems of the United States and this state. The display of a religious object or document under this section must be in the same manner and appearance generally as other objects and documents displayed and may not be presented or displayed in any fashion that results in calling attention to the religious object or document apart from the other displayed objects or documents. A school board shall develop a policy for the proper display of any religious objects or documents.

Approved April 23, 2001

Filed April 23, 2001

CHAPTER 177

SENATE BILL NO. 2323

(Senators O'Connell, Lee, Thane)
(Representatives Boehm, Froseth, Hunskor)

MILITARY OPEN ENROLLMENT

AN ACT to create and enact alternative new sections to chapter 15.1-08 of the North Dakota Century Code, relating to the open enrollment of students registered in military installation school districts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. If House Bill No. 1045 does not become effective, a new section to chapter 15.1-08 of the North Dakota Century Code is created and enacted as follows:

Military installation - Open enrollment - Participation. Notwithstanding any other provisions of law, a student whose school district of residence is a military installation school district may participate in open enrollment under chapter 15-40.3.

SECTION 2. If House Bill No. 1045 does become effective, a new section to chapter 15.1-08 of the North Dakota Century Code is created and enacted as follows:

Military installation - Open enrollment - Participation. Notwithstanding any other provisions of law, a student whose school district of residence is a military installation school district may participate in open enrollment under chapter 15.1-31.

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

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 178

HOUSE BILL NO. 1236

(Representative Hawken)
(Senators Flakoll, Grindberg)

FARGO SCHOOL BOARD TERMS

AN ACT to amend and reenact sections 15.1-09-02 and 15.1-09-27 and subsection 1 of section 15.1-09-30 of the North Dakota Century Code, relating to terms of Fargo board of education members; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-09-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-09-02. School boards - Terms of office. The term of each elected member of a school board is three years, except when the member is completing the unexpired term of another. The term of office for a school board member begins at the annual meeting in July following the member's election and continues until a successor is elected and qualified. ~~The term of office for a member of the board of education of the city of Fargo begins at the first regular monthly meeting after the annual school district election held on the third Tuesday of April.~~

SECTION 2. AMENDMENT. Section 15.1-09-27 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-09-27. Organization of school board - Election of president. At the annual meeting, school board members shall elect from among themselves a president to serve for one year. ~~Members of the Fargo board of education shall elect their president and a vice president at the first regular monthly meeting following the election of new board members.~~

SECTION 3. AMENDMENT. Subsection 1 of section 15.1-09-30 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Each school board shall hold an initial meeting during the month of July following the annual election; ~~except that the initial meeting for the board of education of the city of Fargo must take place at the time of the first regular monthly meeting after its annual election.~~ The president of the school board shall select a meeting date that is convenient to the other board members and shall provide board members with written notice of the meeting.

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

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 179

HOUSE BILL NO. 1335

(Representatives Bellew, DeKrey, Eckre, Haas)
(Senators Dever, Freborg)

SCHOOL AND CITY ELECTIONS

AN ACT to amend and reenact sections 15.1-09-14, 15.1-09-15, 15.1-09-24, 15.1-09-25, 40-09-04, 40-21-02, 40-21-07, and 40-21-12 of the North Dakota Century Code, relating to canvassing school district election results, members of school boards taking oaths of office and failing to qualify for office, terms of city commissioners, withdrawal of city nominating petitions, and canvassing city election results.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-09-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-09-14. School district election - Vote tally. Upon the closing of the polls, the judges shall count and canvass the votes for each office. Within forty-eight hours after the closing of the polls, the judges and clerks of the election shall sign the returns and file them with the business manager of the school district. However, if the election is held under an agreement with a city or county pursuant to sections 15.1-09-22 and 15.1-09-24, the returns must be canvassed and the winners declared as set out in the agreement.

SECTION 2. AMENDMENT. Section 15.1-09-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-09-15. School district election - Declaration of winner. The school board shall canvass all election returns and shall declare the result of an election within three days of the election and, in the case of a tie, within three days from the determination of a winner. However, if the election is held under an agreement with a city or county pursuant to sections 15.1-09-22 and 15.1-09-24, the returns must be canvassed and the winners declared as set out in the agreement. The individual receiving the highest number of votes for an office must be declared elected. The board shall record the result of the election.

SECTION 3. AMENDMENT. Section 15.1-09-24 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-09-24. School boards - Sharing of election expenses. If a school district election is held in conjunction with a primary election, the board of the school district may agree with the governing body of the county or counties in which the district is located to share election costs and responsibilities, including those associated with a canvassing board, election personnel, the printing of election materials, the publishing of legal notices, and the use of poll books. Each board of a school district that enters into an agreement with the county must notify the county auditor, in writing, at least fifty-five days before the election of the offices to be filled at the election and any measures to appear on the ballot.

⁸¹ **SECTION 4. AMENDMENT.** Section 15.1-09-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-09-25. School board members - Affirmation or oath of office. An individual elected as a member of or appointed to a school board shall take and file with the school district business manager an affirmation or oath of office ~~before commencing duties~~ within ten days after notice of the individual's election or appointment. Refusal to take and file an affirmation or oath of office, as required by this section, must also be deemed a refusal to serve and, therefore, a failure to qualify for the office pursuant to section 44-02-01.

SECTION 5. AMENDMENT. Section 40-09-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-09-04. Commissioners - Terms - Resignations. Each commissioner and the president of the board of city commissioners shall hold office for four years ~~after the date of election~~ commencing on the fourth Tuesday in June of the year in which the officer was elected and until a successor has been duly elected and qualified. The commission shall establish by ordinance a procedure whereby one-half of all commissioners, as nearly as practicable, are elected biennially. The president or any other member of the board may resign from office by filing a written resignation with the city auditor, who shall submit the resignation to the board of city commissioners at its next regular meeting or at a special meeting called for consideration of the resignation. The resignation is effective upon its acceptance by the board.

SECTION 6. AMENDMENT. Section 40-21-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-21-02. City elections - When held - Notice - Polls - Agreements with counties - Judges and inspectors. Biennial municipal elections must be held on the second Tuesday in June in each even-numbered year. Ten days' notice of the time and place of the election and of the offices to be filled at the election must be given by the city auditor by publication in the official newspaper of the city as provided by section 40-01-09. The governing body of a city shall enter into an agreement with the governing body of the county or counties in which the city lies concerning the use of a single canvassing board, the sharing of election personnel, the printing of election materials, the publishing of legal notices, and the apportioning of election expenses. For city elections that are not held under an agreement with any county, the governing body of the city shall appoint one inspector and two judges of election for each precinct in the city at least ten days before the election is held and the polls must be opened and closed as provided for the opening and closing of polls at statewide elections. In voting precincts in which over three hundred votes are cast in any previous election, two election clerks may be appointed by the governing body. For a city election that is not held under an agreement with any county in a precinct in which seventy-five or fewer votes were cast in the last city election, the governing body of the city may appoint one inspector and one judge. When a city enters into an agreement with the county to hold the city election in conjunction with the county election, the deadline for giving notice of the city election along with the offices to be filled at the election may be adjusted in order to meet the

⁸¹ Section 15.1-09-25 was also amended by section 13 of House Bill No. 1046, chapter 161.

publishing requirements of the county. Each city governing body that enters into an agreement with the county must notify the county auditor, in writing, at least fifty-five days before the election of the offices to be filled at the election and any measures to appear on the ballot.

SECTION 7. AMENDMENT. Section 40-21-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-21-07. Petition for nomination of elective official in cities - Signatures required - Withdrawal of petition - Contents. A candidate for any public office in an incorporated city may be nominated by filing with the city auditor, at least sixty days and before four p.m. on the sixtieth day before the holding of the election, a petition signed by not less than ten percent of the number of qualified electors who voted for that office in the last city election. If multiple candidates were elected to the office at the preceding city election at which the office was voted upon, the number of signatures must equal at least ten percent of the total votes cast for all candidates divided by the number of candidates that were to be elected to that office at that election. Qualified electors who sign a petition must reside within the ward or precinct in and for which that officer is to be elected, if the election is by wards, or within the corporate limits of the city if the officer is elected at large. In cities operating under the commission system of government the required petition may be signed by the qualified electors at large residing within the city. If a petition is mailed, it must be in the possession of the city auditor before four p.m. on the sixtieth day prior to the holding of the election. However, no more than three hundred signatures may be required and the signatures may be on separate sheets of paper. Petitions must meet the specifications of nominating petitions pursuant to section 16.1-11-16. If a city election is not combined with a state or county election according to section 40-21-02, a candidate may be nominated by filing the required petition with the city auditor at least thirty-three days and before four p.m. on the thirty-third day before the holding of the election. A candidate may withdraw the candidate's nominating petition at any time before the applicable deadlines for filing nominating petitions provided for in this section. Nominating petitions required by this section may not be circulated or signed more than ninety days before the date when nominating petitions must be filed pursuant to this section. Any signatures to a nominating petition obtained more than ninety days before that date may not be counted.

SECTION 8. AMENDMENT. Section 40-21-12 of the North Dakota Century Code is amended and reenacted as follows:

40-21-12. Counting ballots - Returns - Canvass of returns by governing body of municipality. The ballots cast in a municipal election shall be counted and the returns of the election prepared by the election board immediately after the closing of the polls. The ballots and the returns of the election shall be returned to the city auditor under seal within two days and before four p.m. on the second day after the election. Thereafter, the governing body of the municipality shall canvass the returns and declare the result of the election and cause a statement thereof to be entered in its books of minutes. However, if the election is held under an agreement with a county or counties pursuant to section 40-21-02, the returns must be canvassed as set out in the agreement.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 180

HOUSE BILL NO. 1141

(Education Committee)

(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT REORGANIZATION

AN ACT to create and enact three new sections to chapter 15.1-12 of the North Dakota Century Code, relating to school district reorganization; and to amend and reenact section 15.1-12-11.1 of the North Dakota Century Code, relating to school district reorganization bonuses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-12 of the North Dakota Century Code is created and enacted as follows:

Reorganization plan - Building fund levy. The reorganization plan required by section 15.1-12-09 may propose the inclusion of up to ten mills as a building fund levy. If the reorganization plan is approved by a majority of electors residing within the boundaries of the proposed new district, the building fund levy becomes effective, notwithstanding any other voter approval requirement in section 57-15-16.

SECTION 2. A new section to chapter 15.1-12 of the North Dakota Century Code is created and enacted as follows:

Reorganization plan - Interim fund balance.

1. The reorganization plan must specify whether the balance in the interim fund of each district participating in the reorganization is to be wholly or partially allocated to the general fund of the newly reorganized district.
2. If the reorganization plan provides that the balance in the interim fund of each district participating in the reorganization is to be wholly allocated to the general fund of the newly reorganized district, the reorganization plan may also provide that the general fund mill levy applicable to property in those participating districts having a general fund mill levy that is lower than the proposed general fund mill levy for the reorganized district may be raised incrementally, over a period of five years, to the level proposed for the reorganized district.
3.
 - a. If the reorganization plan provides that the balance in the interim fund of each district participating in the reorganization is to be partially allocated to the general fund of the newly reorganized district, then each participating district shall divide the amount of its interim fund balance on the day preceding the effective date of the reorganization by the number of students in average daily membership in the district during the school year concluding on the day preceding the effective date of the reorganization.
 - b. The participating district having the lowest per student interim fund balance must contribute the total amount of its interim fund balance to the general fund of the newly reorganized district.

- c. Each of the other participating districts shall multiply the lowest district's per student interim fund amount by the number of students in average daily membership in their respective districts during the school year concluding on the day preceding the effective date of the reorganization. Each of the other participating districts must contribute the lesser of the amount arrived at under this subdivision or the total amount in its interim fund to the general fund of the newly reorganized district.
- d. If after complying with the requirements of subdivision c, a participating district has a balance available in its interim fund, the reorganization plan must allow that balance to be used by or on behalf of property owners residing within the boundaries of that participating district, as a proportionate credit against any property taxes owed by the property owners. The reorganization plan must determine the manner in which the proportionate credit must be used. The credit may be used either in its entirety on a single occasion or applied to several taxable years. The credit may not be used beyond the fifth taxable year.

SECTION 3. AMENDMENT. Section 15.1-12-11.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15.1-12-11.1. Reorganization bonus - Eligibility - Distribution.

1. If a school district reorganizes with one or more contiguous school districts or portions of districts, the newly reorganized district is entitled to receive a reorganization bonus, provided at least one of the reorganizing districts is a high school district and that the newly reorganized district ~~consists~~:
 - a. Consists of at least eight hundred square miles [207198 hectares];
or
 - b. Consists of at least five hundred square miles [129499 hectares], has a student enrollment of at least five hundred twenty, and had no practical reorganization alternatives that would have allowed it to meet the requirements of subdivision a.
2. The total reorganization bonus to which a newly reorganized district is eligible consists of:
 - a. Fifty thousand dollars per one hundred square mile [25899 hectares] block, or a major portion thereof, included within the reorganized district and calculated by determining the lesser of the total square mileage [hectares] of the reorganized district or one thousand four hundred square miles [362597 hectares], and subtracting from that amount the square mileage [hectares] of the largest district or portion of a district involved in the reorganization;
 - b. One thousand dollars per student calculated by determining the lesser of the total fall enrollment of the newly reorganized district or seven hundred fifty and subtracting from that amount the fall enrollment in the district or portion of the district that had the largest student population of those districts or portions of districts

participating in the reorganization during the school year immediately preceding the effective date of the reorganization; and

- c. Fifty thousand dollars for each whole school district that formed the reorganized district.
3. The superintendent of public instruction shall distribute the reorganization bonus to each eligible reorganized district during the month of December, following the effective date of the district's reorganization.

SECTION 4. A new section to chapter 15.1-12 of the North Dakota Century Code is created and enacted as follows:

Reorganization bonus - Advanced payment.

1. If the boards of two or more school districts vote to study the feasibility and desirability of reorganizing with each other, the boards may apply to the superintendent of public instruction for an advanced reorganization payment.
2. The superintendent of public instruction shall advance a payment of fifteen thousand dollars to the board of each school district that voted to study the reorganization, provided that at least one of the participating districts is a high school district and that the districts, if reorganized, would qualify for a reorganization bonus under section 15.1-12-11.1.
3. If the school districts reorganize, the superintendent of public instruction shall deduct any money advanced under this section from the amount of the bonus due the newly reorganized district under section 15.1-12-11.1.
4. If the school districts fail to reorganize, each district must repay the amount advanced by the superintendent of public instruction under this section, at the time and in the manner determined by the superintendent of public instruction.

Approved April 24, 2001
Filed April 24, 2001

CHAPTER 181

HOUSE BILL NO. 1045

(Legislative Council)
(Education Services Committee)

EDUCATION TITLE REVISION

AN ACT to create and enact chapters 15.1-13, 15.1-14, 15.1-15, 15.1-16, 15.1-17, 15.1-18, 15.1-20, 15.1-21, 15.1-22, 15.1-23, 15.1-27, 15.1-28, 15.1-29, 15.1-30, 15.1-31, 15.1-32, 15.1-33, 15.1-34, 15.1-35, and 15.1-36 of the North Dakota Century Code, relating to elementary and secondary education; to repeal chapters 15-21.1, 15-29, 15-34.1, 15-34.2, 15-35, 15-36, 15-37, 15-38, 15-38.1, 15-38.2, 15-40.1, 15-40.2, 15-40.3, 15-41, 15-43, 15-44, 15-45, 15-47, 15-54, 15-59, 15-59.2, 15-59.3, and 15-60 of the North Dakota Century Code, relating to elementary and secondary education provisions addressed in the creation of North Dakota Century Code title 15.1; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸² **SECTION 1.** Chapter 15.1-13 of the North Dakota Century Code is created and enacted as follows:

15.1-13-01. Definitions. For purposes of this chapter:

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 education director, and a director of a vocational technology center. The term may include an athletic or activity director who meets the requirements of this subsection.
2. "Board" means the education standards and practices board.
3. "Profession of teaching" means the provision in a public school district of teaching services, administrative services, or other services, which require licensure by the education standards and practices board.

15.1-13-02. Education standards and practices board - Membership.

⁸² Section 15.1-13-02 was amended by section 3 of House Bill No. 1326, chapter 182, section 15.1-13-14 was amended by section 2 of House Bill No. 1225, chapter 184, section 15.1-13-17 was amended by section 4 of House Bill No. 1326, chapter 182, and section 15.1-13-29 was amended by section 5 of House Bill No. 1326, chapter 182.

1. The governor shall appoint to the education standards and practices board:
 - a. Four individuals who are public school classroom teachers;
 - b. One individual who is a nonpublic school classroom teacher;
 - c. One individual who is a school board member;
 - d. Two individuals who are administrators; and
 - e. One dean of a college of education or chairman of a department of education.
2. The superintendent of public instruction or the superintendent's designee shall serve as a nonvoting ex officio member.

15.1-13-03. Board compensation. Each member of the board is entitled to receive compensation in the amount of twenty-five dollars 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.

15.1-13-04. Term of office - Vacancy. The term of office for a member of the board is three years, beginning on July first of the year of appointment. No person may serve for more than two consecutive terms. If a vacancy occurs, it must be filled for the duration of the unexpired term in the same manner as an original appointment.

15.1-13-05. Officers. The board annually shall select a chairman and a vice chairman. The executive director of the board or the executive director's designee shall serve as secretary.

15.1-13-06. Meetings - Notice. The chairman of the board shall set the date and time of the board meetings and shall provide at least ten days' notice of the meeting to all board members. The chairman shall call a special meeting when requested to do so, in writing, by a majority of the board members.

15.1-13-07. Quorum - Revocation requirement.

1. A majority of the board constitutes a quorum.
2. Except as otherwise provided in this section, a majority of the quorum at any meeting has the authority to act upon any matter properly before the board.
3. At least five members of the board must consent to the revocation of an individual's teaching license.

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 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.

15.1-13-09. Board powers. The board may:

1. Adopt rules in accordance with chapter 28-32.
2. Contract with other states for the reciprocal approval of teacher preparation programs.
3. Apply for and receive federal or other funds on behalf of the state for purposes related to its duties.
4. Perform any duty related to the improvement of instruction through teacher education, professional development, and continuing education programs.

15.1-13-10. Criteria for teacher licensure.

1. The board shall establish by rule the criteria for teacher licensure and the process for issuing teaching licenses. The criteria must include considerations of character, adequate educational preparation, and general fitness to teach.
2. The board may not require a teacher who graduated from an accredited teacher education program on or before September 1, 1980, to earn any college credits in native American or other multicultural courses as a condition of licensure or license renewal.
3. This section does not affect the validity of teaching certificates in effect on July 31, 2001.
4. This section does not affect the qualifications for vocational education certificates, as otherwise established by law.

15.1-13-11. Application and licensing fees.

1. The board may set and charge a fee for:
 - a. Filing an application for a teaching license.

- b. Issuing a teaching license.
2. Any fee collected by the board must be deposited and disbursed in accordance with section 54-44-12.

15.1-13-12. Teaching license - Period of effectiveness. A teaching license issued by the board is effective for at least one school year, unless suspended or revoked by the board. This section does not apply to provisional teaching licenses issued by the board under section 15.1-13-13.

15.1-13-13. Provisional teaching license - Period of effectiveness - Renewal. The board may issue a provisional teaching license to an applicant awaiting completion of the background check required by section 15.1-13-14. The provisional license is valid for a period of forty days and may be renewed with the approval of the board. The board may adopt rules governing the issuance of a provisional teaching license. An individual applying for a provisional teaching license may be charged a fee established by the board. However, an individual applying for the renewal of a provisional teaching license may not be charged a fee.

15.1-13-14. Initial licensure of teachers - Background check. The board shall check, or cause to be checked, the background of each applicant for initial licensure as a teacher. The board shall require each applicant for licensure to file a complete set of the applicant's fingerprints, taken by 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 applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure.

15.1-13-15. Teaching license - Application - Oath or affirmation.

1. Each applicant for a teaching license shall subscribe to the following oath or affirmation:

I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the state of North Dakota, and that I will faithfully discharge the duties of my position, according to the best of my ability.

2. The applicant shall execute the oath or affirmation in duplicate. One copy of the oath or affirmation must be filed with the board when the applicant applies for a teaching license. The applicant shall retain the other copy.
3. The board may not issue a license to teach unless a duly witnessed or notarized oath or affirmation has been filed with the board.

15.1-13-16. Teaching license - Student transcript. A student who has met all the criteria necessary to receive a teaching license, but who has not graduated from a college or university, may request that the college or university provide a copy of the student's completed transcript to the board or to a comparable entity in another state. Within ten days of the request by the student, the college or university shall provide a copy of the transcript showing that the student has met all the criteria

necessary to receive a teaching license except graduation. The transcript must indicate areas in which the student has a major or minor.

15.1-13-17. Teaching license - Requirements - Exceptions.

1. An individual may not engage in the profession of teaching unless:
 - a. The individual holds a teaching license issued by the board; or
 - b. The individual is approved to teach by the board.
2. An individual may be approved to teach by the board only if the individual has previously held a North Dakota teaching certificate or license, holds a teaching certificate or license issued by another state, or has filed a completed application for licensure with the board.
3. The board shall adopt rules establishing the terms and conditions under which an individual may be approved to teach, as provided for in this section. The terms and conditions may include the payment of a fine to the board, enrollment in and completion of continuing education courses, and submission of a completed application for licensure by a date certain.

15.1-13-18. Teaching license - Presentation to business manager.

Before being employed to teach, an individual shall present to the school district business manager a teaching license or other evidence of approval to teach issued by the board.

15.1-13-19. Teaching license - Expiration. Notwithstanding any other law, an individual whose teaching license expires within the final six weeks of a school year may continue teaching under the expired license until the completion of the school year.

15.1-13-20. Interim reciprocal teaching license - Period of validity.

1. The board shall grant an interim reciprocal teaching license in accordance with sections 15.1-18-02 and 15.1-18-03 to an individual who holds a regular teaching license or certificate from another state, provided:
 - a. The individual's licensure or certification is based upon a minimum of a bachelor's degree with a major that meets the issuing state's requirements in elementary education, middle-level education, or a content area taught at a public high school;
 - b. The individual's licensure or certification is based upon the completion of a professional education sequence from a state-approved teacher education program and includes supervised student teaching;
 - c. The individual submits to a background check as required of initial applicants by this chapter;
 - d. The background check reveals nothing for which a North Dakota applicant would be denied initial licensure; and

- e. The individual submits a plan for meeting all requirements necessary to become a licensed teacher in this state.
2. An interim reciprocal license granted under this section is valid for two years.
3. The individual shall submit evidence of progress on the plan required by subsection 1 to the board prior to renewal of the interim reciprocal license.
4. The board may renew the interim reciprocal license for one additional two-year period if the board finds that the individual has demonstrated satisfactory progress.
5. Notwithstanding any other law, an interim reciprocal license granted under this section is the equivalent of a teaching license granted under this chapter.

15.1-13-21. Reciprocal acceptance of teaching licenses. The board shall pursue the reciprocal acceptance of teaching licenses issued by other states.

15.1-13-22. Licensure of North Dakota American Indian language instructors. The board may license an individual as an instructor of North Dakota American Indian languages and culture if the individual is recommended for licensure to teach North Dakota native languages by an indigenous language board created by a tribal government in this state and if the individual:

1. Displays competence in North Dakota American Indian languages and culture and has successfully completed a three-semester-hour course in classroom instruction at a tribal college or other institution of higher education; or
2. Holds a baccalaureate degree and has knowledge of and experience in North Dakota American Indian languages and culture.

15.1-13-23. School guidance and counseling services - Providers. Notwithstanding any other law, guidance and counseling services at the elementary and secondary school level may be provided by a person holding a graduate degree in counseling from a state-approved school counseling program, with coursework and an internship in school counseling, as required for all counselors by the superintendent of public instruction, provided the person has a North Dakota teaching license or will obtain one within seven years from the date of first employment under this section. The board shall adopt rules relating to the background check of a person hired under this section. All costs associated with a background check are the responsibility of the person being hired. The board shall monitor a person hired under this section to ensure that the person annually completes at least one-seventh of the total credits required for that person to obtain a teaching license, as determined at the time of employment under this section.

15.1-13-24. Complaints against teachers or administrators.

1. Any person may file with the board a complaint against a teacher or an administrator. The complaint must state the claims or charges and it must be signed. The complaint may include supporting documentation.

2. Upon receiving the complaint, the board shall serve a copy of the complaint and any supporting documentation upon the individual personally or by certified mail.
3. The individual has twenty days from the date the individual receives the complaint within which to file a response. The response may include supporting documentation.
4. If the individual files a timely response, the board shall meet to review the complaint, the response, and any documentation submitted by the parties, but may not accept testimony.
5. Based on the complaint, the response, and the documentation submitted in accordance with this section, the board may:
 - a. Dismiss the complaint as unfounded; or
 - b.
 - (1) Determine there is a reasonable basis to believe the claims or charges are true and subject to action by the board under this chapter;
 - (2) File a formal complaint against the individual in accordance with chapter 28-32; and
 - (3) Schedule and hold a public hearing on the complaint in accordance with chapter 28-32.
6. If the individual fails to file a timely response, the board shall determine whether the individual's failure to file a timely response constitutes an admission of the allegations in the complaint and whether the individual's teaching license should be subject to action by the board. If the board determines that the individual's failure to file a timely response is an admission of the allegations in the complaint and that the individual's teaching license should be subject to action by the board, the board shall hold a hearing in accordance with chapter 28-32 to take any appropriate action.

15.1-13-25. Teaching license - Action by board - Causes.

1. After holding a public hearing in accordance with chapter 28-32, the board may issue a written warning or reprimand to the individual, suspend the individual's teaching license, or revoke the individual's teaching license if:
 - a. The individual obtained a license by means of fraud, misrepresentation, or concealment of facts.
 - b. The board becomes aware of any fact or circumstance that would have caused the board to deny licensure had the board known of the fact or circumstance at the time of initial licensure.
 - c. The individual is incompetent, immoral, intemperate, or cruel.
 - d. The individual has been convicted of, has pled guilty to, or has pled nolo contendere to an offense deemed by the board to have a

direct bearing upon an individual's ability to serve as a teacher or an administrator.

- e. The board believes that the individual, having been convicted of an offense, has not been sufficiently rehabilitated under section 12.1-33-02.1.
 - f. The individual has refused to perform the duties of a teacher or an administrator.
 - g. The individual has breached a contract with a school district.
 - h. The individual has violated this chapter or any rule adopted by the board.
2. Any action of the board taken under this section may be appealed to the district court of Burleigh County in accordance with chapter 28-32.

15.1-13-26. Crimes against a child and sexual offenses - Denial of or immediate revocation of teaching license.

1. The board shall deny an application for a teaching license and shall immediately revoke the teaching license of an individual who has been found guilty of a crime against a child or a sexual offense.
2. An individual who is denied a teaching license or who has had a teaching license revoked under subsection 1 may file a request with the board for a due process hearing under chapter 28-32. The hearing must be held within ten days of the request. The scope of the hearing is limited to determining whether the individual was convicted of a crime against a child or a sexual offense and whether the conviction has been overturned on appeal.
3. A final decision denying a teaching license or revoking a teaching license under this section is appealable pursuant to chapter 28-32. A court may not stay the decision pending an appeal. A court shall affirm the decision denying a teaching license or revoking a teaching license unless the court finds that the individual was not convicted of a crime against a child or a sexual offense or that the conviction was overturned on appeal.
4. The board may impose a fee against a licensee as reimbursement for all or part of the costs of administrative actions that result in disciplinary action against the licensee under this section.
5. As used in this section:
 - a. "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 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 overturned on appeal.

- b. "Crime against a child" means violation of section 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-16-04, 12.1-17-01.1, 12.1-17-02, 12.1-17-03, 12.1-17-04, 12.1-17-05, 12.1-17-06, 12.1-17-07, 12.1-17-07.1, 12.1-17-10, 12.1-18-01, 12.1-18-02, 12.1-18-03, 12.1-29-01, 12.1-29-02, or 12.1-29-03, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
- c. "Sexual offense" means a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, or 12.1-22-03.1, or chapter 12.1-27.2, or an equivalent ordinance.

15.1-13-27. Suspension or revocation of teaching license - Notice.

1. If an individual's teaching license is suspended or revoked, the board shall notify the individual, the business manager of the school district employing the individual, each county superintendent of schools in the state, and the superintendent of public instruction.
2. Upon being notified that one's teaching license has been suspended or revoked, the individual shall return the license to the education standards and practices board. If the individual fails to return the license within the time period set by the board, the board may publish notice of the suspension or revocation in the official newspaper of the county in which the individual was employed.

15.1-13-28. Teaching license - Effect of revocation. The revocation of an individual's teaching license results in the immediate termination of the individual's employment by a school district. The school district shall, however, compensate the individual for services rendered only until such time as the notice of revocation is received by the district.

15.1-13-29. Teaching license of administrator - Determinations by subcommittee.

1. Notwithstanding the provisions of any other law, when a complaint regarding an administrator is filed with the board, all actions and determinations provided for in this chapter must be made by a subcommittee of the board.
2. The subcommittee must consist of the two board members who are administrators, the board member who is a school board member, and two board members who are teachers and who have been appointed to the subcommittee by the board.
3. The subcommittee shall convene at a regular or special meeting of the board.
4. The subcommittee shall select its own chairman and vice chairman and the executive director of the board, or the director's designee, shall serve as its secretary.
5. a. A majority of the subcommittee constitutes a quorum for purposes of this section.

- b. Except as otherwise provided in this section, a majority of the quorum has the authority to act on any matter properly before the subcommittee.
 - c. At least three members of the subcommittee must consent to the revocation of an administrator's teaching license.
6. Any action or determination by the subcommittee regarding the teaching license of an administrator:
- a. Must be taken or made by the same process and on the same grounds as provided in sections 15.1-13-24, 15.1-13-25, and 15.1-13-26;
 - b. Has the same force and effect as an action or determination by the education standards and practices board;
 - c. May not be modified by the board; and
 - d. May be appealed under this chapter in the same manner as actions or determinations by the board.

15.1-13-30. Venue for legal actions. Burleigh County, North Dakota, is the venue for all actions to which the education standards and practices board is a party.

15.1-13-31. Conviction of individual holding teaching license - Written notification. A state's attorney shall provide written notification to the board when an individual holding a teaching license is convicted of a felony or a class A misdemeanor.

SECTION 2. Chapter 15.1-14 of the North Dakota Century Code is created and enacted as follows:

15.1-14-01. School district superintendent - Duties. A school district superintendent shall:

1. Supervise the general operation of the school district.
2. Supervise the provision of education to students.
3. Visit the schools of the district.
4. Supervise school personnel.
5. Prepare and deliver reports requested by the board of the district.
6. Perform any other duties requested by the board.

15.1-14-02. School district superintendent - Bond. A school district superintendent shall furnish to the school district a bond in an amount fixed by the board of the school district and equal to at least the maximum amount of money that may be subject to the superintendent's control at any one time. The bond must be conditioned for the faithful discharge of the superintendent's duties, including the maintenance of accurate financial records and the safekeeping and deliverance of all school property and funds that come under the superintendent's control. The bond

must be written through the state bonding fund and must be obtained at the expense of the school district.

15.1-14-03. School district superintendent - Evaluation.

1. Before December fifteenth of each year, the board of a school district shall conduct a formative evaluation of the superintendent's performance.
2. Before March fifteenth of each year, the board shall conduct a formal evaluation of the superintendent's performance. The board shall place a copy of the evaluation report in the superintendent's file and shall provide a copy of the evaluation report to the superintendent.
3. If the board finds the superintendent's performance to be unsatisfactory in any area, the board shall detail its findings regarding the superintendent's performance in the report and shall make recommendations.
4. Upon receiving the report, the superintendent may provide a written response to the board. The board shall place the superintendent's written response in the superintendent's personnel file.
5. The board shall meet with the superintendent to discuss the evaluation.

15.1-14-04. School district superintendent - Grounds for dismissal. The board of a school district may dismiss a school district superintendent 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 superintendent.
5. Failure to perform contracted duties without justification.
6. Gross inefficiency that the superintendent has failed to correct after written notice.
7. Continuing physical or mental disability that renders the superintendent unfit or unable to perform the superintendent's duties.

15.1-14-05. School district superintendent - Discharge for cause - Notice of hearing - Legal expenses.

1. If the board of a school district intends to discharge a superintendent for cause prior to the expiration of the superintendent's contract, the board shall:
 - a. Provide the superintendent with a written description of the reasons for the discharge; and

- b. Provide the superintendent with written notice specifying the date and time at which the board will conduct a hearing regarding the discharge.
2. If the superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation are the responsibility of the superintendent.

15.1-14-06. School district superintendent - Discharge for cause - Hearing.

1. At the hearing, the superintendent may produce evidence and witnesses to rebut any reasons given by the board of the school district for its discharge of the superintendent.
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 superintendent, the hearing must be conducted as an executive session of the board, except that:
 - a. The superintendent may invite to the hearing any two representatives to speak on behalf of the superintendent and may invite the superintendent'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 school district business manager.
5. If a continuance is requested by the superintendent, 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.

15.1-14-07. School district superintendent - Discharge for cause - Report to the education standards and practices board. If the board of a school district discharges a superintendent for cause, the board shall report the discharge to the education standards and practices board.

15.1-14-08. School district superintendent - Suspension during discharge proceeding - Compensation. The board of a school district may suspend a superintendent if, by unanimous vote, the board determines that suspension is appropriate during the period in which a discharge for cause is pursued. If the superintendent is ultimately discharged for cause, the board may determine the amount of compensation, if any, due the superintendent during the period of suspension. If the superintendent is ultimately not discharged, the board may not apply any reduction to the superintendent's salary for the period of suspension.

15.1-14-09. School district superintendent - Nonrenewal of contract - Reasons - Notice.

1. If the board of a school district contemplates not renewing the contract of a superintendent 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 superintendent.
 - 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 superintendent.
 - d. Provide written notification of the reasons for the contemplated nonrenewal to the superintendent.
2. a. The reasons for the contemplated nonrenewal of the superintendent's contract must:
 - (1) Be sufficient to justify the contemplated nonrenewal;
 - (2) Relate to the ability, competence, or qualifications of the superintendent; and
 - (3) Originate from specific findings documented in the formal evaluation of the superintendent's performance required by section 15.1-14-03.
- b. The provisions of this section do not apply if the contemplated nonrenewal is based on a necessary reduction in personnel.

15.1-14-10. School district superintendent - Nonrenewal of contract - Hearing.

1. At the hearing required by section 15.1-14-09, the board of the school district shall present testimony or documentary evidence to substantiate the reasons for the contemplated nonrenewal of a superintendent who has been employed by the board in that position for at least two consecutive years.
2. The superintendent may call witnesses and present evidence necessary to refute the reasons for nonrenewal.
3. Each witness appearing on behalf of the board of the school district or the superintendent may be questioned for the purpose of clarification.
4. Unless otherwise agreed to by the board and the superintendent, the hearing must be conducted as an executive session of the board, except that:

- a. The superintendent may invite to the hearing any two representatives to speak on behalf of the superintendent and may invite the superintendent'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 school district business manager.
5. If the superintendent chooses to be accompanied by an attorney, the legal expenses attributable to that representation are the responsibility of the superintendent.
 6. If a continuance is requested by the superintendent, 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 superintendent, the board shall provide written notice of its decision to the superintendent on or before May first.

15.1-14-11. School district superintendent - Contract - Failure to provide notice of nonrenewal. The contract of a school district superintendent 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 a school district has not provided written notification to the superintendent regarding a contemplated nonrenewal of the superintendent's contract; and
2. On or before June first, the superintendent has not provided to the board a written resignation.

15.1-14-12. School district superintendent - Employed for less than two years - Notification of nonrenewal. If the board of a school district elects not to renew the contract of a superintendent 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 superintendent before May first. At the request of the superintendent, the board shall meet with the superintendent to convey the reasons for the nonrenewal.

15.1-14-13. Multidistrict special education unit - Director - Evaluation.

1. Before December fifteenth of each year, the board of a multidistrict special education unit 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.

15.1-14-14. Multidistrict special education unit - Director - Grounds for dismissal. The board of a multidistrict special education unit 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.

15.1-14-15. Multidistrict special education unit - Director - Discharge for cause - Notice of hearing - Legal expenses.

1. If the board of a multidistrict special education unit 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.

15.1-14-16. Multidistrict special education unit - 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 multidistrict special education unit 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 unit'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.

15.1-14-17. Multidistrict special education unit - Director - Discharge for cause - Report to the education standards and practices board. If the board of a multidistrict special education unit discharges a director for cause, the board shall report the discharge to the education standards and practices board.

15.1-14-18. Multidistrict special education unit - Director - Suspension during discharge proceeding - Compensation. The board of a multidistrict special education unit 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.

15.1-14-19. Multidistrict special education unit - Director - Nonrenewal of contract - Reasons - Notice.

1. If the board of a multidistrict special education unit 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, on or before April fifteenth, shall:
 - 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 15.1-14-13.
- b. The provisions of this section do not apply if the contemplated nonrenewal is based on a necessary reduction in personnel.

15.1-14-20. Multidistrict special education unit - Director - Nonrenewal of contract - Hearing.

1. At the hearing required by section 15.1-14-19, the board of the multidistrict special education unit 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 unit'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 in excess of 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.

15.1-14-21. Multidistrict special education unit - Director - Contract - Failure to provide notice of nonrenewal. The contract of a multidistrict special education unit 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 multidistrict special education unit 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.

15.1-14-22. Multidistrict special education unit - Director - Employed for less than two years - Notification of nonrenewal. If the board of a multidistrict special education unit 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.

15.1-14-23. Area vocational and technology center - Director - Evaluation.

1. Before December fifteenth of each year, the board of an area vocational 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.

15.1-14-24. Area vocational and technology center - Director - Grounds for dismissal. The board of an area vocational 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.

15.1-14-25. Area vocational and technology center - Director - Discharge for cause - Notice of hearing - Legal expenses.

1. If the board of an area vocational 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.

15.1-14-26. Area vocational 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 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.

15.1-14-27. Area vocational and technology center - Director - Discharge for cause - Report to the education standards and practices board. If

the board of an area vocational and technology center discharges a director for cause, the board shall report the discharge to the education standards and practices board.

15.1-14-28. Area vocational and technology center - Director - Suspension during discharge proceeding - Compensation. The board of an area vocational 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.

15.1-14-29. Area vocational and technology center - Director - Nonrenewal of contract - Reasons - Notice.

1. If the board of an area vocational 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.

15.1-14-30. Area vocational 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 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.

15.1-14-31. Area vocational and technology center - Director - Contract - Failure to provide notice of nonrenewal. The contract of an area vocational 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.

15.1-14-32. Area vocational and technology center - Director - Employed for less than two years - Notification of nonrenewal. If the board of an area vocational 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 3. Chapter 15.1-15 of the North Dakota Century Code is created and enacted as follows:

15.1-15-01. Performance reviews - Written reports.

1. a. The school district shall conduct two performance reviews of each individual employed as a teacher, a principal, or as an assistant or associate superintendent during each of the first three years an individual holds such a position. The school district shall prepare written reports of the individual's performance. The school district shall make the first yearly report available to the individual on or before December fifteenth. The school district shall make the second yearly report available to the individual on or before March fifteenth.
- b. If an individual begins employment as a teacher, a principal, or as an assistant or associate superintendent after January first, the school district shall conduct one review of the individual's performance. The school district shall make the written report available to the individual on or before March fifteenth.
2. Beginning with the fourth year of an individual's employment as a teacher, a principal, or as an assistant or associate superintendent, the school district shall conduct at least one review of the individual's performance each year. The school district shall prepare a written report of the individual's performance and make the report available to the individual on or before March fifteenth.

15.1-15-02. First-year teachers - Review of evaluations - Renewal and nonrenewal of contracts.

1. If the board of a school district contemplates not renewing the contract of an individual employed as a first-year teacher, the board shall review the individual's evaluations required by section 15.1-15-01 and meet with the individual in an executive session to discuss the reasons for the contemplated nonrenewal.
2. The individual employed as a first-year teacher may be accompanied by two representatives selected by the individual for the purpose of speaking on behalf of the individual and by the individual's spouse or one other family member.
3. No claim for relief for libel or slander may be brought regarding any communication made at an executive session of a school board held pursuant to this section.
4. If the board of a school district elects not to renew the contract of an individual employed as a first-year teacher, the board shall provide written notification of the decision, together with a detailed description of the board's reasons, to the individual no earlier than April fifteenth nor later than May first.
5. Failure by the board of a school district to provide the notification required by subsection 4 constitutes an offer to renew the individual's contract on the same terms and conditions as the individual's contract for the current year.

6. For purposes of this section, a "first-year teacher" means an individual teaching for the first school year since obtaining a license to teach.

15.1-15-03. Employment after January first - Review of evaluation - Renewal and nonrenewal of contracts.

1. If the board of a school district contemplates not renewing the contract of an individual employed after January first as a teacher, a principal, or as an assistant or associate superintendent, the board shall review the individual's evaluation required by section 15.1-15-01 and meet with the individual in an executive session to discuss the reasons for the contemplated nonrenewal.
2. The individual may be accompanied by two representatives selected by the individual for the purpose of speaking on behalf of the individual and by the individual's spouse or one other family member.
3. No claim for relief for libel or slander may be brought regarding any communication made at an executive session of a school board held pursuant to this section.
4. If the board of a school district elects not to renew the contract of the individual, the board shall provide written notification of the decision, together with a detailed description of the board's reasons, to the individual no earlier than April fifteenth nor later than May first.
5. Failure by the board of a school district to provide the notification required by subsection 4 constitutes an offer to renew the individual's contract on the same terms and conditions as the individual's contract for the current year.
6. The provisions of this section are applicable only through the conclusion of the school year in which the individual was employed.

15.1-15-04. Contracts - Renewals - Notice.

1.
 - a. If the board of a school district elects not to renew the contract of a teacher, a principal, or an assistant or associate superintendent for the ensuing school year, the board shall provide written notification of the decision to the individual.
 - b. The board may not notify the individual under this section earlier than March first nor later than May first of the school year in which the individual has been employed.
 - c. The failure of a board to provide written notice under this subsection constitutes an offer to renew the individual's contract for the ensuing school year, under the same terms and conditions as the individual's current contract.
2.
 - a. No earlier than March first nor later than May first, the board of a school district shall notify each individual offered renewal of a contract of the date by which the individual must accept or reject the contract.

- b. At least thirty calendar days must pass between the notification of each individual, as required by this subsection, and the date by which the individual must accept or reject the contract.
 3.
 - a. In order to accept an offer to renew a contract, including an offer generated by the failure of a board to provide written notice as required by subsection 1, an individual shall provide written notification of acceptance to the board on or before the date required by the board or June first, whichever is earlier. An individual accepting an offer to renew a contract is entitled to a written contract for the ensuing school year.
 - b. In order to reject an offer to renew a contract, including an offer generated by the failure of a board to provide written notice as required by subsection 1, an individual shall provide written notification of rejection to the board on or before the date required by the board or June first, whichever is earlier.
 - c. If an individual fails to provide notification of acceptance or rejection of an offer to renew a contract, the board is relieved of any continuing contract provisions.
 4. If negotiations are being carried on pursuant to chapter 15.1-16, the provisions of this section requiring the board of a school district to give an individual notice and requiring that the individual respond to the notice are suspended until the negotiations are completed.

15.1-15-05. Contracts - Contemplated nonrenewal - Reasons - Notice.

1. If the board of a school district contemplates not renewing the contract of an individual employed as a teacher, a principal, or as an associate or assistant superintendent, the board shall, no earlier than March first nor later than April fifteenth:
 - a. Provide written notification of the contemplated nonrenewal to the individual.
 - 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 individual.
 - d. Provide written notification of the reasons for the contemplated nonrenewal to the individual.
2. The reasons for the contemplated nonrenewal of the individual's contract must not be frivolous or arbitrary. The reasons must be sufficient to justify the contemplated nonrenewal and must:
 - a. Originate from specific findings documented in the report of the individual's performance required by section 15.1-15-01 and relate to the individual's ability, competence, or qualifications; or

- b. Originate from the needs of the district in justifying a reduction in the staff.

15.1-15-06. Contracts - Contemplated nonrenewal - Hearing.

1. At the hearing required by section 15.1-15-05, the school district superintendent or a designee of the board shall present testimony or documentary evidence regarding the reasons for the contemplated nonrenewal of the individual's contract.
2. The board of the school district contemplating the nonrenewal of an individual's contract may call additional witnesses to present testimony or documentary evidence regarding the reasons for nonrenewal.
3. The individual whose contract is subject to nonrenewal may call witnesses and produce evidence necessary to refute the reasons for the nonrenewal.
4. Each witness appearing on behalf of the board of the school district or the individual whose contract is subject to nonrenewal may be questioned for the purpose of clarification.
5. The board of the school district shall review all testimony and evidence presented at the hearing and make a determination regarding the nonrenewal. If the board determines that the reasons for nonrenewal have not been substantiated, the board shall dismiss the nonrenewal proceedings.
6. Unless otherwise agreed to by the board of the school district and the individual subject to the nonrenewal, the hearing must be conducted as an executive session of the board, except that:
 - a. The individual may invite to the hearing any two representatives, and the individual's spouse or one other family member; and
 - b. The board may invite to the hearing any two representatives, the school district business manager, and the school district superintendent.
7. The individual subject to the nonrenewal may request one continuance. If a continuance is requested, the board of the school district shall grant a continuance not in excess of seven days.
8. No cause of action for libel or slander may be brought regarding any communication made in an executive session of the board held for the purposes provided in this section.
9. A determination by the board of a school district not to renew an individual's contract is, if made in good faith, final and binding on all parties.
10. If the board of a school district elects not to renew an individual's contract, the board shall provide notice of its determination to the individual in writing on or before May first.

15.1-15-07. Discharge for cause - Grounds. The board of a school district may dismiss an individual employed as a teacher, a principal, or as an assistant or associate superintendent 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 held by the individual.
5. Failure to perform contracted duties without justification.
6. Gross inefficiency that the individual has failed to correct after written notice.
7. Continuing physical or mental disability that renders the individual unfit or unable to perform the individual's duties.

15.1-15-08. Discharge for cause - Hearing.

1. If the board of a school district contemplates the discharge for cause of an individual employed as a teacher, a principal, or as an assistant or associate superintendent, prior to the expiration of the individual's contract, the board shall provide written notice to the individual at least ten days prior to the discharge date. The notice must:
 - a. State the date and time at which the board will conduct a special hearing to address charges against the individual; and
 - b. State that the individual may demand a list of the charges.
2. If the individual demands a list of charges under subsection 1, the board shall furnish the list to the individual at least five days before the hearing.
3. If the individual notifies the board in writing at least two days before the hearing that the individual intends to contest the charges, the board shall produce evidence of the charges at the hearing, together with witnesses who are subject to cross-examination by the individual or by a representative of the individual.
4. If a witness is a minor and if it is the wish of the witness or the witness's parent, the witness may be accompanied by legal counsel and a parent.
5. At the hearing, the individual may produce evidence and witnesses to refute any charges. Any witnesses produced by the individual are subject to cross-examination.
6. The hearing must be conducted in accordance with chapter 28-32.
7. Unless otherwise agreed to by the board and the individual, the hearing must be conducted as an executive session of the board, except that:

- a. The individual may invite to the hearing any two representatives and the individual's spouse or one other family member; and
 - b. The board may invite to the hearing any two representatives, the school business manager, and the school district superintendent.
8. The individual subject to the discharge may request one continuance. If a continuance is requested, the board of the school district shall grant the continuance not in excess of seven days. Upon a showing of good cause by the individual, the board may grant a continuance in excess of seven days.
 9. No cause of action for libel or slander may be brought regarding any communication made in an executive session of the board held for the purposes provided in this section.

15.1-15-09. Alleged child abuse - Discharge - Nonrenewal of contract - Limitations.

1. The board of a school district may not discharge or refuse to renew the contract of a teacher, a principal, or an assistant or associate superintendent solely because a report of suspected child abuse or neglect under section 50-25.1-05 alleges participation by the individual.
2. If a report of suspected child abuse or neglect under section 50-25.1-05 alleges participation by a teacher, a principal, or an assistant or associate superintendent, the board of a school district may suspend the individual pending the outcome of the case.

15.1-15-10. Suspension during discharge proceeding - Compensation.

1. The board of a school district may suspend an individual employed as a teacher, a principal, or as an assistant or associate superintendent if, by unanimous vote, the board determines that suspension is appropriate during the period in which a discharge for cause is pursued.
2. The board shall address the matter of the individual's suspension in an executive session, unless both the board and the individual agree that the matter may be addressed in the presence of others or at an open meeting of the board.
3. If the individual is ultimately discharged for cause, the board may determine the amount of compensation, if any, payable to the individual during the period of suspension. If the individual is ultimately not discharged, the board may not apply any reduction to the individual's salary for the period of suspension.

15.1-15-11. Discharge for cause - Report to education standards and practices board. If the board of a school district discharges for cause an individual employed as a teacher, a principal, or as an assistant or associate superintendent, the board shall report the discharge to the education standards and practices board.

15.1-15-12. Nonapplicable provisions. This chapter does not apply to:

1. Any individual employed to teach at an institution of higher education under the control of the state board of higher education;

2. Any individual employed to teach at the youth correctional center, the school for the blind, or the school for the deaf; and
3. Any individual who replaces a teacher, a principal, or an assistant or associate superintendent while that teacher, principal, or assistant or associate superintendent is on a leave of absence or a sabbatical.

⁸³ **SECTION 4.** Chapter 15.1-16 of the North Dakota Century Code is created and enacted as follows:

15.1-16-01. Definitions. As used in this chapter:

1. "Administrator" means an individual who is employed by the board of a public school district primarily for administration of a school or schools of the district and who devotes at least fifty percent of the individual's time in any one year to the duties of administration of the school or schools of the district.
2. "Negotiating unit" means:
 - a. A group of administrators having common interests, common problems, a common employer, or a history of common representation, which warrants that group being represented by a single representative organization in negotiations with the board of a school district; or
 - b. A group of teachers having common interests, common problems, a common employer, or a history of common representation, which warrants that group being represented by a single representative organization in negotiations with the board of a school district.
3. "Representative organization" means an organization authorized by a negotiating unit to represent the members of the unit in negotiations with a school board.
4. "Strike" means any concerted work stoppage, slowdown, or withholding of contracted services.
5. "Teacher" means a public school employee licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and employed primarily as a classroom teacher.

15.1-16-02. Education factfinding commission - Appointment - Terms - Quorum.

1. The education factfinding commission consists of three members experienced in educational activities. One member is appointed by the governor, one member is appointed by the superintendent of public

⁸³ Section 15.1-16-03 was amended by section 2 of Senate Bill No. 2366, chapter 185, and section 15.1-16-04 was amended by section 3 of Senate Bill No. 2366, chapter 185.

instruction, and one member is appointed by the attorney general. The member appointed by the superintendent of public instruction shall serve as the chairman of the commission.

2. The term of each commission member is three years staggered.
3. If a vacancy occurs, the individual who appointed the member to be succeeded shall appoint a new member to serve only the unexpired term of the member to be succeeded.
4. Two members of the commission constitute a quorum.

15.1-16-03. Education factfinding commission - Compensation. Each member of the commission is entitled to receive compensation at the rate of sixty-two dollars and fifty cents per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings or performing duties directed by the commission.

15.1-16-04. Education factfinders - Compensation. Each factfinder appointed by the education factfinding commission, including each commission member who serves as a factfinder, is entitled to receive compensation at the rate of sixty-two dollars and fifty cents per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings or performing duties directed by the commission.

15.1-16-05. Education factfinding commission - Rules - Powers. The education factfinding commission may adopt rules. The commission and any factfinder appointed by the commission have, in the performance of their duties, the powers provided in sections 28-32-09, 28-32-11, and 28-32-12.

15.1-16-06. Factfinding - Sharing of cost. If an impasse is deemed to exist under section 15.1-16-14, the contending parties shall share the cost of factfinding equally.

15.1-16-07. Representative organizations - Participation.

1. An individual employed as a teacher may form, join, and participate in the activities of a representative organization of the individual's choosing for the purpose of representation on matters of employer-employee relations.
2. An individual employed as an administrator may form, join, and participate in the activities of a representative organization of the individual's choosing for the purpose of representation on matters of employer-employee relations.
3. Any individual employed as a teacher or as an administrator may refuse to join or participate in the activities of a representative organization.

15.1-16-08. Representative organization - Negotiating unit - Right to negotiate. A representative organization has the right to represent a negotiating unit in matters of employee relations with the board of a school district. Any teacher or administrator has the right to present the individual's views directly to the board.

15.1-16-09. Scope of representation. A representative organization's scope of representation may include matters relating to the terms and conditions of employment and employer-employee relations, including salary and working hours.

15.1-16-10. Negotiating unit - Formation. A group of teachers or a group of administrators employed by the board of a public school district may form a negotiating unit by filing with the board a description of the job groupings or positions that constitute the negotiating unit. Upon receipt of the description, the board shall accept or reject the proposed negotiating unit. If the board accepts the negotiating unit, the teachers or the administrators within the unit may designate or select a representative organization as provided for in section 15.1-16-11.

15.1-16-11. Representative organization - Selection.

1.
 - a. If an organization is interested in representing a group of teachers or a group of administrators, the organization may file with the board of a school district a petition asserting that the organization represents a majority of the teachers or the administrators included within a negotiating unit.
 - b. The petition must be accompanied by evidence substantiating the assertion contained in it.
 - c. Within ten days after receiving the petition, the board of the school district shall post notice of its intent to consider the petition in each school wherein the members of the negotiating unit are employed.
 - d. No sooner than ten nor later than twenty days after posting the notice of intent to consider the petition, the board shall investigate the petition, determine the question of representation, and post notice of its determination in each school wherein the members of the negotiating unit are employed.
 - e. If the petition is not contested, the board shall recognize the petitioner as the representative organization of the negotiating unit, unless it finds in good faith that there is a reasonable doubt the representation exists.
2. If any organization has an interest in representing a group of teachers or a group of administrators and wishes to contest the claim of representation made in the petition under subsection 1, the contesting organization must file with the board of the school district a petition containing a written statement of contest together with substantiating evidence, within ten days from the date on which the board posted the notice of intent to consider the original petition.
3. If the board of a school district fails to make and post notice of its determination or if the board's determination has been contested, the board shall call an election to determine the question of representation not sooner than twenty nor later than thirty days after the posting of the notice of intent to consider the original petition.
4. If the board of a school district receives a petition that is signed by at least twenty-five percent of the members of the negotiating unit and which calls for an election to determine the question of representation, the board shall call the election.

5. The election must be conducted in the manner agreed to by the interested parties. If the interested parties cannot reach an agreement, the election must be conducted in the manner determined by the education factfinding commission under its rules.
6. Once a representative organization has been selected, its authority to represent the negotiating unit continues for at least one year from the date of the selection.

15.1-16-12. Representative organization - Payroll deduction - Dues. If an individual who is employed as a teacher, and who is a member of a representative organization as defined in this chapter, signs a petition requesting that dues for the representative organization be deducted from the individual's regular paycheck, the board of the school district shall comply with the petition. Nothing in this section may be interpreted to mean that the dues of a nonmember must be deducted in that manner.

15.1-16-13. Good-faith negotiations.

1. The board of a school district or its representatives and the representative organization or its representatives shall, if requested by either entity, meet at reasonable times and negotiate in good faith regarding:
 - a. The terms and conditions of employment.
 - b. Employer-employee relations.
 - c. Formation of a contract, which may contain a provision for binding arbitration.
 - d. The interpretation of an existing contract.
2. The board of a school district and the representative organization, at the request of either party, shall execute a written contract incorporating any agreement reached.
3. Either the board of a school district or the representative organization may modify or terminate the contract on its annual anniversary date by giving notice of its desire to modify or terminate the contract to the other party not less than sixty days before the annual anniversary date.
4. Nothing in this section compels either the board of a school district or a representative organization to agree to a proposal or to make a concession.

15.1-16-14. Impasse - Existence.

1. An impasse exists if:
 - a. After a reasonable period of negotiation, an agreement has not been formulated and a dispute exists.
 - b. The board of a school district and the representative organization both agree that an impasse exists.

2. An impasse may exist if:
 - a. A written contract entered into between the board of a school district and the representative organization under section 15.1-16-13 does not contain a procedure for resolving a dispute.
 - b. A written agreement entered into between the board of a school district and the representative organization under section 15.1-16-13 contains an inadequate procedure for resolving a dispute.

15.1-16-15. Impasse - Resolution.

1. If an impasse exists, the board of a school district and the representative organization may agree to seek mediation. The board and the representative organization shall jointly select a mediator and agree to a distribution of the mediation cost. If mediation fails or if mediation is not attempted, the board or representative organization may request that the education factfinding commission provide assistance.
2. If the education factfinding commission is asked to provide assistance under subsection 1 and if the commission determines that an impasse exists, the commission shall act as a factfinding commission or appoint a factfinder from a list of qualified individuals maintained by the commission. A factfinder appointed under this section has the powers designated by the commission. Upon completion of all duties, the factfinder shall make a recommendation to the commission.
3. The education factfinding commission shall:
 - a. Consider the facts, make its findings, and issue a recommendation; or
 - b. Consider the report and recommendation of its factfinder and, after any further investigation the commission elects to perform, make its findings and issue a recommendation.
4. Within forty days from the date the commission is asked to provide assistance, the commission shall deliver its findings and recommendations to the board of the school district and to the representative organization. No sooner than ten nor later than twenty days after its findings and recommendations are delivered to the board and the representative organization, the commission shall make its findings and recommendation public if the impasse is not resolved.
5. If facts are established or a recommendation made in accordance with factfinding procedures agreed to by the board of the school district and the representative organization and the impasse continues, the education factfinding commission may consider the findings and recommendations without instituting its own factfinding procedure and the commission may issue its own findings and recommendations based on the information available. No sooner than ten nor later than twenty days after these findings and recommendations are delivered to the board and the representative organization, the commission shall make its findings and recommendations public if the impasse is not resolved.

15.1-16-16. Participation in a strike - Prohibition. Teachers and administrators employed by school districts may not participate in a strike. The board of a school district may withhold some or all the wages otherwise due a teacher or an administrator who elects to participate in a strike in violation of this section.

15.1-16-17. Discrimination - Prohibition. Neither the board of a school district nor any administrator employed by the district may discriminate against any individual employed as a teacher or administrator because the individual exercises rights available under this chapter.

15.1-16-18. Representative organization - Recognition - Withdrawal of recognition. A contract between the board of a school district and a representative organization bars another representative group from petitioning for recognition and bars the withdrawal of recognition from the representative organization for the duration of the contract or three years, whichever is less.

15.1-16-19. Sick leave - Accumulation. The board of a school district shall allow a teacher to:

1. Use at least ten days of sick leave each school year without a loss of compensation; and
2. Accumulate sick leave and carry over from year to year at least thirty days of accumulated unused sick leave.

15.1-16-20. School for the blind - School for the deaf - Youth correctional center - Contracts of employment for teachers - Personnel policies.

1. The superintendent of public instruction shall develop contracts of employment and personnel policies applicable to each individual employed as a teacher at the school for the blind and the school for the deaf. The director of the division of juvenile services, with the approval of the director of the department of corrections and rehabilitation, shall develop contracts of employment and personnel policies applicable to each individual employed as a teacher at the North Dakota youth correctional center.
2. The contracts required by this section may include the assignment of duties, salaries, work hours, job titles, and a school calendar.
3. The personnel policies required by this section must include job descriptions and nonrenewal, discipline, and dismissal procedures. The policies must seek to harmonize the rights of teachers with laws applicable to other state employees. The superintendent of public instruction and the director of the division of juvenile services, with the approval of the director of the department of corrections and rehabilitation, shall work together in the development of the personnel policies.
4. Each individual employed as a teacher at the school for the blind, the school for the deaf, or the youth correctional center is entitled to receive a copy of a master agreement consisting of a policy manual and an individualized contract specifying the individual's job title, contracted hours, salary schedule, benefits, and other details applicable to the individual's employment.

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 and technological resource person required to meet teaching and licensure requirements; and
 - e. Is not a superintendent, assistant superintendent, principal, supervisor, substitute, or paraprofessional.

SECTION 5. Chapter 15.1-17 of the North Dakota Century Code is created and enacted as follows:

15.1-17-01. Personnel file - Review by teacher. A teacher employed by a school district or a state-supported institution that provides elementary and secondary education to its students may review documents generated and placed in the teacher's personnel file after the teacher was employed for the position. Upon receiving a written request, the school principal, administrator, or school district superintendent shall provide to a teacher a copy of any document in the teacher's personnel file. The teacher shall pay any copying costs.

15.1-17-02. Personnel file - Teacher's response. A teacher employed by a school district may provide the school district superintendent with a written response to any document in the teacher's personnel file. A teacher employed by a state institution that provides elementary and secondary education to its students may provide the institution's administrator with a written response to any document in the teacher's personnel file. A school district superintendent or an administrator receiving a written response under this section shall attach the response to the appropriate document and return both to the teacher's personnel file.

15.1-17-03. Personnel file - Objection to documents. If a teacher believes that any document in the teacher's personnel file, other than a formal performance evaluation, is inappropriate or inaccurate, the teacher may request that the file be reviewed by the principal of the school or by the administrator if the school is a state institution that provides elementary and secondary education to its students. If a teacher employed by a school district is dissatisfied with the outcome of the initial review, the teacher is entitled to have the file reviewed, upon written request, by the school district superintendent. If a teacher employed by a school district is dissatisfied with the outcome of the superintendent's review, the teacher is entitled to have the file reviewed, upon written request, by the school board.

15.1-17-04. Complaint against teacher - Notification. If a complaint is filed against a teacher or against an individual for whom the teacher is administratively responsible, and the complaint is to be placed in the teacher's personnel file, the school principal, administrator, or school district superintendent shall inform the teacher of the complaint.

15.1-17-05. No secret files maintained - Penalty. It is a class B misdemeanor for any individual employed by a school district or a state-supported institution that provides elementary and secondary education to its students to maintain documents about a teacher unless the teacher has access to the documents, as provided in this chapter.

SECTION 6. Chapter 15.1-18 of the North Dakota Century Code is created and enacted as follows:

15.1-18-01. Early childhood education teaching license. The education standards and practices board shall develop and implement an optional early childhood education teaching license. The optional early childhood education teaching license may be used in nonparental settings such as early childhood programs, preschool programs, and head start programs.

15.1-18-02. Kindergarten through grade eight - Teacher qualifications - Exceptions.

1. In order to teach kindergarten, 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 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.

15.1-18-03. Grades nine through twelve - Teacher qualifications - Exceptions.

1. In order to teach any grade nine through twelve, an individual must 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 a minor equivalency endorsement issued by the board in the course area or field being taught by the individual.
2. The approval status of a high school is not impacted by the employment of an individual who has a teaching license issued by the education standards and practices board in the disciplines of trade, industrial, technical, or health under chapter 15-20.1 but has neither a major nor a minor in the assigned field.
3. A minor equivalency granted to an individual by the superintendent of public instruction under prior authority remains valid.
4. Subsection 1 does not apply to an eminence-credentialed teacher.

15.1-18-04. Student teacher - Eminence-credentialed teacher - Legal authority and status.

1. An individual assigned as a student teacher or employed as an eminence-credentialed teacher has the same legal authority and status as a licensed teacher employed by the school district. The authority extends to all aspects of student management and discipline, the handling of confidential student records, and to all legal authority granted to a licensed teacher in the state.

2. An individual assigned as a student teacher or employed as an eminence-credentialed teacher must be deemed a licensed teacher employed by the district with respect to acts performed by the individual at the direction of or with the consent of the district employees under whose supervision and control the individual performs duties, whether or not the duties are performed entirely in the presence of district employees assigned to supervise the individual.
3. An individual assigned as a student teacher or employed as an eminence-credentialed teacher must be deemed an employee of the school district for purposes of liability insurance coverage under sections 32-12.1-05 and 39-01-08.
4. For purposes of this chapter, "eminence-credentialed teacher" means an individual who provides teaching services in accordance with subsection 21 of section 15.1-09-33.

⁸⁴ **SECTION 7.** Chapter 15.1-20 of the North Dakota Century Code is created and enacted as follows:

15.1-20-01. Compulsory attendance. Any person having responsibility for a child between the ages of seven and sixteen years shall ensure that the child is in attendance at a public school for the duration of each school year. This section does not apply if a child is exempted under the provisions of section 15.1-20-02.

15.1-20-02. Compulsory attendance - Exceptions.

1. The provisions of section 15.1-20-01 do not apply if the person having responsibility for the child demonstrates to the satisfaction of the school board that:
 - a. The child is in attendance for the same length of time at an approved nonpublic school;
 - b. The child has completed high school;
 - c. The child is necessary to the support of the child's family;
 - d. A multidisciplinary team that includes the child's school district superintendent, the director of the child's special education unit, the child's classroom teacher, the child's physician, and the child's parent has determined that the child has a disability that renders attendance or participation in a regular or special education program inexpedient or impracticable; or
 - e. The child is receiving home education; provided, however, that this exception is not available if the child has developmental disabilities as defined by subsection 1 of section 25-01.2-01.

⁸⁴ Section 15.1-20-01 was amended by section 2 of House Bill No. 1371, chapter 189.

2. A decision by the board of a school district under subsection 1 is appealable to the district court.

15.1-20-03. Compulsory attendance law - Enforcement. Each teacher and administrator is charged with the enforcement of compulsory school attendance provisions. The compulsory school attendance provisions are applicable to any child who is offered school facilities by a school district, regardless of whether or not the child actually resides in the district. Each individual listed in this section shall investigate any alleged violation of the compulsory attendance provisions and shall obtain from the parent of any child not attending school in accordance with the requirements of this chapter the reason, if any, for the absence. In any school district not having a district superintendent, the county superintendent of schools must be notified of any allegation regarding the violation of compulsory attendance provisions and the county superintendent shall report the allegation to the state's attorney of the county. In all other districts, the school district superintendent or the principal of the child's school shall report to the state's attorney of the county the facts in connection with any alleged violation of the compulsory attendance provisions. The state's attorney may petition a court, pursuant to chapter 27-20, for a determination as to whether a child is educationally deprived.

15.1-20-04. Home education - Definition. For purposes of this chapter, "home education" means an educational program for a child provided in accordance with chapter 15.1-23 by the child's parent in the child's home.

SECTION 8. Chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

15.1-21-01. Education of students - Requirements. The superintendent of public instruction shall ensure that students receive education in:

1. English language arts, including reading, composition, creative writing, English grammar, and spelling.
2. Mathematics.
3. Social studies, including the United States Constitution, and United States history, geography, and government.
4. Science, including agriculture.
5. Physical education.
6. Health, including physiology, hygiene, disease control, and the nature and effects of alcohol, tobacco, and narcotics.

15.1-21-02. High schools - Required units. In order to be approved by the superintendent of public instruction, each public and nonpublic high school shall make available to each student:

1. Four units of English.
2. Three units of mathematics.
3. Four units of science.

4. Three units of social studies, including one of world history and one of United States history, both of which must emphasize geography.
5. One unit of health and physical education.
6. One unit of music.
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.

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.

15.1-21-04. Minimum high school courses - Alternative curriculum plans.

1. Except as otherwise provided in this section, each student shall enroll in at least four units of high school work in each grade from nine through twelve.
2. A student in grade twelve may enroll in fewer than four units of work, provided:
 - a. The student requires fewer than four units of work for graduation; and
 - b. The board of the school district has adopted an alternative high school senior curriculum plan.
3. An alternative high school senior curriculum plan becomes effective if:
 - a. It is adopted by action of the school board;
 - b. It contains specific criteria under which a high school senior may enroll in fewer than four units of work; and
 - c. It has been submitted to and approved by the superintendent of public instruction.

15.1-21-05. Indian education curriculum. The superintendent of public instruction may develop an Indian education curriculum to be implemented within the minimum curriculum requirements for elementary and secondary schools. The superintendent shall provide for continuing research and evaluation and for inservice training necessary to implement an Indian education curriculum.

15.1-21-06. Goals 2000 - Participation voluntary. The board of a school district may choose to participate or not to participate in Goals 2000 Educate America Act [Pub. L. 103-227; 108 Stat. 125; 20 U.S.C. 5801 et seq.]. A board that chooses to participate and directly or indirectly receives federal funds for its participation shall expend the funds in the manner it determines best meets the goal of educational enhancement in the school district, in accordance with the district's locally developed goals 2000 educational improvement application plan. The superintendent of public instruction may not impose any financial penalty or other sanction on a school or school district if the school board chooses, at any time, to terminate participation in goals 2000.

15.1-21-07. School-to-work - Student participation voluntary. Before an elementary or secondary school student may participate in any course, program, or project offered under the auspices of the School-to-Work Opportunities Act of 1994 [Pub. L. 103-239; 108 Stat. 568; 20 U.S.C. 2394 et seq.], the student's school principal shall obtain the written consent of the student's parent or legal guardian. Participation by a student is voluntary and may not be deemed a condition of graduation. Neither school personnel, school district personnel, nor the superintendent of public instruction may impose any academic penalties or any other sanctions on a student for failure to participate. A student's participation in a course, program, or project offered under the auspices of the School-to-Work Opportunities Act of 1994 is subject to all state and federal child labor laws.

SECTION 9. Chapter 15.1-22 of the North Dakota Century Code is created and enacted as follows:

15.1-22-01. Kindergarten - Establishment by board - Petition for establishment - Levy.

1. Upon its own motion, the board of a school district may establish a free public kindergarten for the instruction during a school year of resident children below school age.
2. If the board receives a petition signed by qualified electors residing in the district equal in number to at least twenty percent of those who voted in the most recent annual school district election, the board must submit the question of establishing a kindergarten to the electorate at the next annual or special school district election. The margins of electoral approval provided in section 57-15-14 must be applied.
3. The board of a school district that establishes a kindergarten under this section may levy a tax pursuant to subdivision p of subsection 1 of section 57-15-14.2.

15.1-22-02. Public kindergarten - Requirements. A school district operating a kindergarten:

1. May not employ an individual as a kindergarten teacher unless the individual is licensed to teach by the education standards and practices board or approved by the education standards and practices board.

2. Shall submit to the superintendent of public instruction and follow a developmentally appropriate curriculum.
3. Shall provide at least the equivalent of thirty full days of instruction, on a half-day or full-day basis, as determined by the school board.
4. Shall apply all municipal and state health, fire, and safety requirements to the kindergarten.
5. May not enroll a child who is not five years old by midnight August thirty-first of the year of enrollment, unless the child will be five years old on or before December thirty-first and:
 - a. The child, by means of developmental and readiness screening instruments approved by the superintendent of public instruction and administered by the kindergarten operator, can demonstrate special talents or abilities; or
 - b. The child has been enrolled in another approved kindergarten.

15.1-22-03. Nonpublic kindergarten - Requirements - Approval. Any person operating a nonpublic kindergarten may request approval of the kindergarten from the superintendent of public instruction. The superintendent shall approve a nonpublic kindergarten if it meets the requirements of section 15.1-22-02.

15.1-22-04. Kindergarten - Discontinuation. A school board by resolution may cease to provide a kindergarten.

SECTION 10. Chapter 15.1-23 of the North Dakota Century Code is created and enacted as follows:

15.1-23-01. Home education - Definition. For purposes of this chapter, "home education" means a program of education supervised by a child's parent, in the child's home, in accordance with the requirements of this chapter.

15.1-23-02. Statement of intent to supervise home education. At least fourteen days before beginning home education or within fourteen days of establishing a child's residence in a school district, and once each year thereafter, a parent intending to supervise or supervising home education shall file a statement, reflecting that intent or fact, with the superintendent of the child's school district of residence or if no superintendent is employed, with the county superintendent of schools for the child's county of residence.

1. The statement must include:
 - a. The name and address of the child receiving home education;
 - b. The child's date of birth;
 - c. The child's grade level;
 - d. The name and address of the parent who will supervise the home education;
 - e. The qualifications of the parent who will supervise the home education;

- f. Any public school courses in which the child intends to participate and the school district offering the courses; and
 - g. Any extracurricular activities in which the child intends to participate and the school district or approved nonpublic school offering the activities.
2. The statement must be accompanied by a copy of the child's immunization record and proof of the child's identity as required by section 54-23.2-04.2.

15.1-23-03. Home education - Parental qualifications. A parent may supervise home education if the parent:

1. Is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
2. Holds a baccalaureate degree;
3. Has met or exceeded the cutoff score of a national teacher exam given in this state or in any other state if this state does not offer such a test; or
4. Meets the requirements of section 15.1-23-06.

15.1-23-04. Home education - Required subjects - Instructional time. A parent supervising home education shall include instruction in those subjects required by law to be taught to public school students. The instruction must have a duration of at least four hours each day for a minimum of one hundred seventy-five days each year.

15.1-23-05. Home education - Academic records. A parent supervising home education shall maintain an annual record of courses taken by the child and the child's academic progress assessments, including any standardized achievement test results. If the child transfers to a public school district, the parent shall furnish the record, upon request, to the school district superintendent or other administrator.

15.1-23-06. Home education - Required monitoring of progress. A parent who has a high school diploma or a general education development certificate may supervise home education but must be monitored in accordance with section 15.1-23-07 for the first two years. If a child receiving home education obtains a basic composite standardized achievement test score below the fiftieth percentile nationally, the parent must be monitored for at least one additional school year and until the child receives a test score at or above the fiftieth percentile. If testing is not required by section 15.1-23-07 during the first two years of monitoring, the period of monitoring may not be extended, except upon the mutual consent of the parent and the monitor. If a parent completes the monitoring requirements of this section for one child, the parent may not be monitored with respect to other children for whom the parent supervises home education.

15.1-23-07. Home education - Required monitoring of progress - Reporting of progress - Compensation.

1. If monitoring is required under section 15.1-23-06, the school district shall assign and compensate an individual to monitor a child receiving

home education unless the parent notifies the school district that the parent shall select and compensate an individual to monitor the child.

2. The individual assigned by the school district or selected by the parent under subsection 1 must be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board.
3. Twice during each school year, the individual shall report the child's progress to the school district superintendent or to the county superintendent if the district does not employ a superintendent.
4. If one child receives home education, the individual shall spend an average of one hour per week in contact with the child and the child's parent. If two or more children receive home education, the individual shall spend one-half hour per month for each additional child receiving home education. If the child attends a public or an approved nonpublic school, the time may be proportionately reduced.

15.1-23-08. Monitoring or test administration. An individual who in accordance with this chapter monitors a child receiving home education or who administers a standardized achievement test to a child receiving home education shall notify the child's school district of residence.

15.1-23-09. Home education - Standardized achievement test. While in grades four, six, eight, and ten, each child receiving home education shall take a standardized achievement test used by the school district in which the child resides or, if requested by the parent, shall take a nationally normed standardized achievement test. The child shall take the test in the child's learning environment or, if requested by the child's parent, in a public school. An individual licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board shall administer the test.

15.1-23-10. Home education - Standardized achievement test - Cost.

1. If a child receiving home education takes the standardized achievement test used by the school district in which the child resides, the school district is responsible for the cost of the test and for the cost of administering the test. The school district shall ensure that the test is administered by an individual who is employed by the district and who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board.
2.
 - a. If the child takes a nationally normed standardized achievement test not used by the school district in which the child resides, the child's parent is responsible for the cost of the test.
 - b. The cost of administering a test under this subsection is the responsibility of the child's parent if the test is administered by an individual who is selected by the parent. An individual selected by the child's parent to administer a test under this subsection must be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board.

- c. The cost of administering a test under this subsection is the responsibility of the school district if, at the request of the child's parent, the school district administers the test. The school district shall ensure that the test is administered by an individual who is employed by the district and who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board.

15.1-23-11. Home education - Standardized achievement test - Results.

1. A parent supervising home education shall file the results of the child's standardized achievement test with the superintendent of the district in which the child resides or with the county superintendent if the district does not employ a superintendent.
2. If the child's basic composite score on a standardized achievement test is less than the thirtieth percentile nationally, a multidisciplinary assessment team shall assess the child for a potential learning problem under rules adopted by the superintendent of public instruction.
3. If the multidisciplinary assessment team determines that the child is not disabled and the child's parent wishes to continue home education, the parent, with the advice and consent of 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, shall prepare a remediation plan to address the child's academic deficiencies and file the plan with the superintendent of the school district or with the county superintendent if the district does not employ a superintendent. The parent is responsible for any costs associated with the development of the remediation plan. If the parent fails to file a remediation plan, the parent is deemed to be in violation of compulsory school attendance provisions and may no longer supervise the home education of the child.

15.1-23-12. Home education - Remediation plan. The superintendent of the school district shall use the remediation plan required by section 15.1-23-11 as the basis for determining reasonable academic progress. The remediation plan must remain in effect until such time as the child achieves on a standardized achievement test a basic composite score at or above the thirtieth percentile or a score, which when compared to the previous year's test score, demonstrates one year of academic progress. At the option of the parent, the test may be one required by section 15.1-23-09 or one administered in a higher grade level. The child's parent, with the advice and consent of an individual who is licensed to teach by the education standards and practices board or who is approved to teach by the education standards and practices board, may amend the remediation plan from time to time in order to accommodate the child's academic needs. If after a remediation plan is no longer in effect the child fails to demonstrate reasonable academic progress on a subsequent test required by this section, a remediation plan must again be developed and implemented.

15.1-23-13. Home education - Disabilities - Services plan.

1. If a multidisciplinary assessment team, using eligibility criteria established by the superintendent of public instruction, determines that the child is disabled, that the child requires specially designed instruction due to the disability, and that this instruction cannot be

provided without special education and related services, the parent may continue to supervise home education, provided that:

- a. The child does not have a developmental disability;
 - b. The parent files with the school district superintendent a services plan that was developed privately or through the school district; and
 - c. The services plan demonstrates that the child's special needs are being addressed by persons qualified to provide special education or related services.
2. Annually, the superintendent of the child's school district of residence shall determine reasonable academic progress based on the child's services plan.
 3. If a parent fails to file a services plan as required by this section, the parent is deemed to be in violation of the compulsory school attendance provisions and may no longer supervise the home education of the child.
 4. A child who was once evaluated by a multidisciplinary assessment team need not be reevaluated for a potential learning problem upon scoring below the thirtieth percentile on a subsequent standardized achievement test unless the reevaluation is performed pursuant to the child's services plan.

15.1-23-14. Children with autism - Home education. Notwithstanding any other law, a parent may supervise home education for a developmentally disabled child with autism if:

1. The child has been determined to be autistic by a licensed psychologist;
2. The child's parent is qualified to supervise home education under this chapter; and
3. The child's parent files with the superintendent of the child's school district of residence:
 - a. A notice that the child will receive home education;
 - b. A copy of the child's diagnosis of autism prepared and attested to by a licensed psychologist; and
 - c. A services plan developed and followed by the child's school district of residence and the child's parent; or, after providing written notice to the superintendent of the child's school district of residence, a substitute services plan, developed and followed, according to section 15.1-23-15, by a services plan team selected by and compensated by the child's parent.

15.1-23-15. Children with autism - Home education - Progress reports.

1. On or before November first, February first, and May first of each school year, a parent supervising home education for an autistic child under

section 15.1-23-14 shall file with the superintendent of the child's school district of residence progress reports prepared by the services plan team selected under section 15.1-23-14. If at any time the services plan team agrees that the child is not benefiting from home education, the team shall notify the superintendent of the child's school district of residence and request that the child be evaluated by a multidisciplinary team appointed by the superintendent of the child's school district of residence.

2. The superintendent of the child's school district of residence shall forward copies of all documentation required by this section to the superintendent of public instruction.

15.1-23-16. Home education - Participation in extracurricular activities.

1. A child receiving home education may participate in extracurricular activities either:
 - a. Under the auspices of the child's school district of residence; or
 - b. Under the auspices of an approved nonpublic school, if permitted by the administrator of the school.
2. For purposes of this section, a child participating under the auspices of the child's school district of residence is subject to the same standards for participation in extracurricular activities as those required of full-time students enrolled in the district.
3. For purposes of this section, a child participating under the auspices of an approved nonpublic school is subject to the same standards for participation in extracurricular activities as those required of full-time students enrolled in the school.
4. Once a child's parent has selected the public school district or the approved nonpublic school in which the child will participate for purposes of extracurricular activities and has provided notification of the selection through the statement required by section 15.1-23-02, the child is subject to the transfer rules as provided in the constitution and bylaws of the North Dakota high school activities association.

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 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.

15.1-23-18. Home education - Liability. No state agency, school district, or county superintendent may be held liable for accepting as correct the information on the statement of intent or for any damages resulting from a parent's failure to educate the child.

15.1-23-19. Home education - State aid to school districts. For purposes of allocating state aid to school districts, a child receiving home education is deemed enrolled in the child's school district of residence if the child is monitored by an individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and employed by the public school district in which the child resides. A school district is entitled to fifty percent of the per student payment provided in section 15.1-27-04 times the appropriate factor in section 15.1-27-06 or 15.1-27-07 for each child receiving home education. If a child receiving home education is enrolled in public school classes, proportionate payments must be made. The total amount may not exceed the equivalent of one full per student payment times the appropriate weighting factor.

⁸⁵ **SECTION 11.** Chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

15.1-27-01. Payments to school districts - Distribution.

1. The superintendent of public instruction shall determine the total state payments made to each school district during the previous fiscal year.
2. The superintendent of public instruction shall pay each district ten percent of the amount determined under subsection 1, within the limits of legislative appropriation, on or before July fifteenth, August first, September first, and October first of each year.
3. The superintendent of public instruction shall determine the amount that, in addition to the payments already made, is necessary to constitute the remainder of the amount due each district for the current school year.

⁸⁵ Section 15.1-27-01 was amended by section 2 of Senate Bill No. 2430, chapter 191, section 15.1-27-04 was amended by section 7 of House Bill No. 1344, chapter 173, section 15.1-27-05 was amended by section 8 of House Bill No. 1344, chapter 173, section 15.1-27-12 was amended by section 2 of House Bill No. 1321, chapter 192, and section 15.1-27-26 was amended by section 17 of House Bill No. 1013, chapter 13.

4. On or before November first, the superintendent of public instruction shall pay to each district, within the limits of legislative appropriation, an amount that, in addition to the above payments, constitutes fifty percent of the sum due under this chapter.
5. On or before the first day of December, January, February, March, and April, payments equal to twenty percent of the total remaining payments must be made to each district.
6. If funds appropriated for distribution to districts as per student and transportation aid become available after April first, the superintendent of public instruction shall distribute the newly available payments on or before June thirtieth.

15.1-27-02. Per student payments - Required reports.

1. The superintendent of public instruction may not forward state aid payments to a school district beyond the October payment unless the district has filed the following with the superintendent:
 - a. An annual average daily membership report.
 - b. An annual school district financial report.
 - c. The September tenth fall enrollment report.
 - d. The personnel report forms for licensed and nonlicensed employees.
2. On or before December fifteenth, each school district shall file with the superintendent of public instruction the taxable valuation and mill levy certifications. If a district fails to file the taxable valuation and mill levy certifications by the required date, the superintendent of public instruction may not forward to the district any state aid payments to which the district is entitled, until the taxable valuation and mill levy certifications are filed.

15.1-27-03. Cost of education - Determination.

1. The superintendent of public instruction shall determine the educational cost per student.
2. In determining the educational cost per student, the superintendent may not use:
 - a. Capital outlay for buildings.
 - b. Capital outlay for sites.
 - c. Capital outlay for debt service.
 - d. Expenditures for school activities.
 - e. Expenditures for school lunch programs.
 - f. Expenditures for transportation costs, including schoolbuses.

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 one hundred forty-five dollars. The per student payment to which each school district is entitled for the second year of the biennium is two thousand two hundred thirty 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.

15.1-27-05. 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, and transportation aid for which a school district is eligible and from that total subtract the following:

1. The product of thirty-two mills times the latest available net assessed and equalized valuation of property in the district.
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.

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 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.
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 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.
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 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.

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 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.
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.

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 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. 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 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. 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 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. 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 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. 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 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. 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 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.
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 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. 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.

15.1-27-08. Per student payments - Unaccredited high schools. If a high school becomes unaccredited, the per student payment to which the school district is entitled during the first year in which the high school is unaccredited is the amount established in section 15.1-27-04. The school district is not entitled to the amount that results from applying the weighting factors provided in section 15.1-27-06. In each successive year, the per student payment to which the school district is entitled for each student in the unaccredited high school must be reduced by an additional two hundred dollars. If a school regains its accreditation, the school is entitled to the per student payments provided for accredited schools for the entire school year in which the school becomes accredited.

15.1-27-09. Per student payments - Unaccredited elementary schools. If a school district operates an unaccredited elementary school, the per student payment to which the school district is entitled during the first year in which the elementary school is unaccredited is the amount established in section 15.1-27-04. The school district is entitled to the amount that results from applying the weighting factors provided in section 15.1-27-07. In each successive year, the per student payment to which the school district is entitled for each student in the unaccredited elementary school must be reduced by an additional two hundred dollars. If a school regains its accreditation, the school is entitled to the per student payments provided for accredited schools for the entire school year in which the school becomes accredited.

15.1-27-10. Per student payments - Special education.

1. Except as provided in subsection 2, each biennium the superintendent of public instruction shall distribute moneys appropriated by the legislative assembly for per student special education payments to each school district in the state on the basis of students in average daily membership. The superintendent of public instruction shall forward the payments, as calculated under section 15.1-27-05, to eligible school districts in the same manner and at the same time that the superintendent distributes per student and transportation aid payments. For purposes of this section, "special education" means the provision of special services to students who have special needs, including students who are gifted and talented. Expenditures under this section may not conflict with nonsupplanting and maintenance of effort provisions under the Individuals With Disabilities Education Act, 20 United States Code 1400 et seq.

2. Upon the written request of a school district, the superintendent of public instruction may forward all or a portion of the moneys to which the school district is entitled under this section directly to the special education unit of which the school district is a member.
3. The superintendent of public instruction may withhold state special education funds due a school district if, in response to a complaint, the superintendent finds that the district is not providing a free appropriate public education to a student as required by law. Any withholding under this subsection may not exceed an amount equal to the cost of meeting the affected student's needs.

15.1-27-11. High school districts - Supplemental payments. 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 district's latest available net assessed and equalized taxable valuation of property. 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:

1. 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. Multiply the result determined under subsection 1 by the number of students in average daily membership in grades one through twelve in the high school district;
3. Multiply the result determined under subsection 2 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. Multiply the result determined under subsection 3 by thirty percent. 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.

15.1-27-12. Per student payments - Limited English proficient students.

1. In addition to any other payments provided for by this chapter, each school district is entitled to receive four hundred dollars for each student who has been assessed by the student's school district and determined to have negligible or very limited English language skills as evidenced by a classification of level I or II using the Woodcock-Munoz language survey.
2. In order to receive the full payment provided for in this section, a school district must complete the student assessment required by subsection 1 and forward the results to the superintendent of public instruction on or before October twenty-fifth of each school year. 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 October first or

departing from the school district prior to the completion of the school year.

15.1-27-13. Per student payments - Students on active duty. A school district is entitled to receive payments under this chapter for a student who is absent up to one semester because the student is a member of the North Dakota national guard and is engaged in active duty or training within or outside the state.

15.1-27-14. Per student payments - Students attending school out of state. For each student attending school out of state in accordance with section 15.1-29-01, the weighting factors provided in sections 15.1-27-06 and 15.1-27-07 must be increased by twenty percent.

15.1-27-15. Per student payments - Isolated schools.

1. If an elementary school has fewer than fifty students and fifteen percent or more of its students would have to travel beyond a fifteen-mile [24.15-kilometer] radius from their residences in order to attend another school, the weighting factor provided under section 15.1-27-07 must be increased by twenty percent for the first fifteen students. If the school has fewer than fifteen students, the payment received must be for fifteen students.
2. If a high school has fewer than thirty-five students and fifteen percent or more of its students would have to travel beyond a twenty-mile [32.2-kilometer] radius from their residences in order to attend another school, the weighting factor provided under section 15.1-27-06 must be increased by twenty percent for the first twenty students. If the school has fewer than twenty students, the payment received must be for twenty students.

15.1-27-16. Per student payments - Cooperating districts. If, on or after July 1, 1997, any school district receiving payments under this chapter cooperates with another school district for the joint provision of educational services under a plan approved by the superintendent of public instruction, each cooperating district is entitled to receive, for a period of four years, at least the same per student payment for each high school and elementary student as the district received prior to initiation of the cooperative plan.

15.1-27-17. Per student payments - Reorganization of school districts.

1. If any school district receiving per student payments calculated under section 15.1-27-06 reorganized with another school district under chapter 15.1-12 before August 1, 1997, the school district resulting from the reorganization is entitled to receive the same per student payments for each high school student as each separate school district received for each high school student prior to the reorganization, for a period of four years.
2. If any school district receiving per student payments calculated under this chapter reorganizes with another school district under chapter 15.1-12 after July 31, 1997, the school district resulting from the reorganization is entitled to receive the same per student payments for each high school and elementary student as each separate school district received for each high school and elementary student prior to the reorganization, for a period of four years.

3. The weighting factor for each district will be adjusted proportionately over a period of two years, following the period of time provided in subsection 1 or 2, until the adjusted weighting factor equals the weighting factor for the combined enrollment resulting from the reorganization.
4. Notwithstanding the provisions of any other law, no school district may receive less in per student payments for the first year of its reorganization than the total amount that the districts participating in the reorganization received in per student payments for the school year immediately preceding the reorganization. If less than a whole school district participated in a reorganization, the superintendent of public instruction shall prorate the payments to which the newly reorganized district is entitled under this subsection.

15.1-27-18. Per student payments - Eligibility - Minimum amounts.

1. In order to be counted for the purpose of calculating per student payments, as provided for by this chapter, a high school student must be enrolled in at least four high school units. The units may include vocational education courses offered in accordance with chapter 15-20.1 and courses that are approved by the superintendent of public instruction and offered by another high school district.
2. If a student is enrolled for graduation in a nonpublic school or if a student is taking fewer than four high school units and is enrolled in an approved alternative high school education program, the school district in which the student is enrolled is entitled to receive proportionate payments.
3. Each high school district must receive at least as much in total per student payments as it would have received if it had the highest number of students in the next lower weighting category.

15.1-27-19. Summer school courses and programs - Proportionate payments.

1. Each school district that offers summer school courses at the high school level is entitled to receive proportionate payments provided each course offered satisfies requirements for graduation, comprises at least as many clock-hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction.
2. A school district that offers remedial summer school programs at the elementary level is entitled to receive proportionate payments provided the programs comply with rules adopted by the superintendent of public instruction.
3. The superintendent of public instruction may adopt rules regarding proportionate payments for remedial summer school programs at the elementary level and summer school courses at the high school level.
4. Proportionate payments made under this section during a biennium for summer school courses or programs may not exceed one and one-half percent of the total amount appropriated by the legislative assembly for

per student and transportation 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.

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 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 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 a verified statement of the name, residence, and membership of each student and the units of high school work taken by each 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. A district may appeal the determination of a county superintendent 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 of the superintendent of public instruction is final.

15.1-27-21. Payment to school district - Property valuation changes.

1. If the taxable valuation of property is diminished because real property is reclassified as personal property as a result of legislative or judicial action, the state payment to an affected school district must be based on the diminished valuation in the year in which it is paid to the district.
2. If the state payment to a school district is based upon a determination of property valuation that is later diminished by legislative or judicial action, the district has one year from the date of the final determination or adjudication of the property tax base adjustment within which to apply to the superintendent of public instruction for a supplemental state payment in an amount equaling the difference between the amount that the district received and the amount that the district would have received if the correct property tax base had been used.
3. A school district is entitled to the supplemental state payment provided by this section even if the payment is made in a succeeding biennium.
4. The superintendent of public instruction shall pay the amount due under this section within the limits of legislative appropriations for per student payments and transportation aid.

15.1-27-22. Insufficient moneys - Fractional payments. If moneys in the state general fund are insufficient to make all payments to school districts, the superintendent of public instruction shall prorate the payments on a fractional basis. As additional moneys come into the fund, payments may be made until the school districts receive all moneys to which they are entitled. If an appropriation made by the legislative assembly is inadequate to meet all claims against the appropriation and is therefore the cause of the insufficiency, the prorated fractional payments made under this section constitute payment in full.

15.1-27-23. Weather or other emergency conditions - Closure of schools - State payments to school districts. If because of severe weather or other emergency conditions a school or school district remains closed or provides less than a full day of instruction, the school or school district shall make every effort to reschedule classes so that students receive at least one hundred seventy-three full days of instruction. Any school or school district for which the rescheduling of classes would create undue hardship may request that, for purposes of calculating state payments to the school or school district, the governor waive the rescheduling in whole or in part. The governor may not grant a waiver for less than a full day of instruction.

15.1-27-24. Taylor Grazing Act funds - Disposition. The state treasurer shall apportion payments from the federal government to this state under the provisions of 43 United States Code 315i (the Taylor Grazing Act) among the counties in the state in the proportion that the number of acres [hectares] of Taylor Grazing Act land in each county bears to the total amount of Taylor Grazing Act land

in the state. The state treasurer shall make the distributions to school districts in each county on the basis of average daily membership of all students residing within the county.

15.1-27-25. Royalties available under federal law - Distribution to counties and school districts - Continuing appropriation.

1. Any money paid to the state by the secretary of the treasury of the United States under the provisions of an Act of Congress entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain" [Pub. L. 66-146; 41 Stat. 437; 30 U.S.C. 181 et seq.] must be credited to the state general fund and must be distributed only pursuant to the terms of this section.
2. Within three months following the calendar quarters ending in March, June, September, and December, the state auditor shall certify to the state treasurer the amount of money the state received during the preceding calendar quarter for royalties under the Act of Congress cited in subsection 1.
3. The state treasurer shall allocate the percentage of the total moneys received as required by this section among the counties in which the minerals were produced based on the proportion each county's mineral royalty revenue bears to the total mineral royalty revenue received by the state for that calendar quarter. The state treasurer shall pay the amount calculated to each county.
4. The counties may use any money received under this section only for the planning, construction, and maintenance of public facilities and the provision of public services.
5. The percentage of money received by the state under the Act of Congress cited in subsection 1 which must be allocated and paid to the counties under this section is ten percent for collections in 2000, twenty percent for collections in 2001, thirty percent for collections in 2002, forty percent for collections in 2003, and fifty percent for collections in 2004 and thereafter.
6. Any remaining money received by the state under the Act of Congress cited in subsection 1 must be distributed to school districts as provided for in this chapter. Any moneys distributed under this subsection are deemed the first moneys withdrawn or expended from the general fund for the purpose of state aid to school districts.
7. The funds needed to make the distribution to counties, as provided for in this section, are hereby appropriated on a continuing basis.

15.1-27-26. School district transportation of students - Payments.

1. Each school district providing transportation to students in contract schoolbuses or in district-owned and operated schoolbuses, and each school district with students riding commercial buses to and from school is entitled to receive the following amounts:
 - a. Twenty-five cents per mile [1.61 kilometers] for each schoolbus and school vehicle having a capacity of nine or fewer students and

- transporting students who reside outside the incorporated limits of the city in which the students' school is located.
- b. Sixty-seven cents per mile [1.61 kilometers] for each schoolbus and school vehicle having a capacity of ten or more students and transporting students who reside outside the incorporated limits of the city in which the students' school is located.
 - c. Twenty-five cents per mile [1.61 kilometers] for each schoolbus and school vehicle transporting students who reside within the incorporated limits of a city in which the students' school is located.
 - d. Twenty cents for each one-way trip by a student who rides a schoolbus or a commercial bus to or from school and who resides within the incorporated limits of the city in which the student's school is located.
2. A school district that is entitled to payments for a schoolbus having a capacity of ten or more students is also entitled to receive forty cents per day for each public school student who resides outside the city limits and who is transported in such a bus.
 3. Only a school district abiding by the laws of this state with respect to schoolbus standards and schoolbus driver qualifications, as determined by the superintendent of public instruction, may receive payments under this section.
 4. For each student transported by family transportation in accordance with section 15.1-30-02, a school district is entitled to receive forty cents per day for each mile [1.61 kilometers] over two miles [3.22 kilometers] measured from the front door of the school attended by the student to the front door of the student's residence, according to the most convenient route of public travel.

15.1-27-27. School district transportation of special education students - Payments.

1. Each school district is entitled to receive the following for transporting students enrolled in special education programs:
 - a. If the district transports nine or fewer students per vehicle, the amount provided in section 15.1-27-26 for the transportation of nine or fewer students per vehicle.
 - b. If the district transports ten or more students per vehicle, the amount provided in section 15.1-27-26 for the transportation of students in a vehicle having a capacity of ten or more.
2. Except as provided in subsection 3, a school district entitled to payments under this section is entitled to transportation aid for all miles [kilometers] traveled and for each student transported, even if a student lives within the incorporated limits of the city in which the student's school is located.

3. 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.
4. Notwithstanding any other law, the superintendent of public instruction shall make the payments due a school district under this section directly to a multidistrict special education unit if requested to do so by the school district.

15.1-27-28. School district transportation of vocational 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 and technical education courses offered through cooperative arrangements approved by the state board for vocational 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 and technology center if requested to do so by the school district.

15.1-27-29. Transportation payments - Certification of information.

1. On or before July fifteenth of each year, the business manager of a school district shall certify to the county superintendent of schools 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 year, the business manager of a school district shall certify to the county superintendent of schools 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 year, the business manager of each school district shall certify to the county superintendent of schools the amount of transportation payments claimed and any other information required by the superintendent of public instruction.
4. On or before September first of each year, the county superintendent of schools shall:
 - a. Certify to the superintendent of public instruction all claims for transportation payments submitted by each school district in the county; and
 - b. Notify a school district of any claims for transportation payments that have been disallowed.
5. A district may appeal the decision of a county superintendent under subsection 4 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 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.

15.1-27-30. School district closure - Distribution of transportation payments.

1. If a school district ceases to exist, the superintendent of public instruction shall calculate the amount of transportation payments to which the former school district would have been entitled for providing transportation services during its final year of operation and shall pay a percentage of the total amount to each North Dakota school district that enrolls students who attended the former school district during the prior school year. Each of the school districts eligible for a payment under this section is entitled to receive that percentage of the total amount which is the same as the percentage that the number of the district's students who attended the former school district during the prior school year bears to the total number of students who attended the former school district during the prior school year.
2. The superintendent of public instruction shall pay the amount to which a school district is entitled under this section in the manner and at the time provided for other state payments in section 15.1-27-01.

15.1-27-31. State transportation payments to school districts.

1. The superintendent of public instruction shall forward transportation aid payments to school districts in the same manner and at the same time as other payments from the state to school districts are made, as provided in section 15.1-27-01.

2. No school district may receive more than ninety percent of the actual costs it incurs in the provision of transportation services.
3. For purposes of this section, actual costs include the transportation operating expenditures reported to the superintendent of public instruction for the most recent year plus the eight-year average cost of transportation equipment determined by the superintendent of public instruction. Any district that has contracted for transportation services, however, may determine its actual costs for the first year the district provides its own transportation services by using the statewide average cost of transportation during that first year.

15.1-27-32. School district closure - Distribution of per student special education payments.

1. If a school district ceases to exist, the superintendent of public instruction shall calculate the amount of per student special education payments to which the former school district would have been entitled under section 15.1-27-10 for the provision of special education services during its final year of operation and shall pay a percentage of the total amount to each North Dakota school district that enrolls students who attended the former school district during the prior school year. Each of the school districts eligible for a payment under this section is entitled to receive that percentage of the total amount which is the same as the percentage that the number of the district's students who attended the former school district during the prior school year bears to the total number of students who attended the former school district during the prior school year.
2. The superintendent of public instruction shall make payments under this section in the manner and at the time provided for other state payments in section 15.1-27-01.

15.1-27-33. Nonoperating school districts - Education of students - State payments.

1. Notwithstanding any other law, a school district operating on July 1, 1999, may become a nonoperating district, provided:
 - a. The board of the district terminates the operation of all public schools in the district;
 - b. The board provides for the education in other school districts of all kindergarten, elementary, and secondary school students residing in the district; and
 - c. The board pays to each school district educating its students the full per student cost of education in the receiving district.
2. The board of a nonoperating school district shall continue to employ, on a full-time or a part-time basis, one person qualified to manage the finances of the district.
3. The board of a nonoperating school district is governed by all laws applicable to the board of an operating school district.

4. In lieu of all other state payments, a nonoperating school district under this section is entitled to receive an amount equal to the per student payment determined under section 15.1-27-04 and multiplied by the number of students ages six through seventeen who reside in the district, as established by the latest available school district census, less the product of thirty-two mills times the latest available net assessed and equalized valuation of property of the school district.
5. A school district may be nonoperational for no more than three school years.
6. At or before the conclusion of the three-year period, the nonoperating school district must become, through reorganization or dissolution, part of one or more operating school districts.
7. A school district that has become a nonoperating district and has accepted state payments, as provided for by this section, may not revert to an independent operating district.

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 payments and transportation aid to the youth correctional center to support the provision of educational services by the youth correctional center.

15.1-27-35. Average daily membership - Calculation. Average daily membership is calculated by adding the total number of days that each student in a given classroom, school, or school district is in attendance during a school calendar and the total number of days that each student in a given classroom, school, or school district is absent during a school calendar, and then dividing the sum by one hundred eighty. For purposes of calculating average daily membership, all students are deemed to be in attendance on:

1. The three holidays listed in subdivisions b through j of subsection 1 of section 15.1-06-02 and selected by the school board in consultation with district teachers;
2. The two days set aside for the attendance of teachers at the North Dakota education association instructional conference; and
3. The two full days, or portions thereof, during which parent-teacher conferences are held or which are deemed by the board of the district to be compensatory time for parent-teacher conferences held outside regular school hours.

SECTION 12. Chapter 15.1-28 of the North Dakota Century Code is created and enacted as follows:

15.1-28-01. State tuition fund - Source. The net proceeds of fines for the violation of state laws, payments for school land leases, and interest and income from the common schools trust fund must be paid into the state treasury and constitute the state tuition fund.

15.1-28-02. Reports of county treasurer. The county treasurer shall collect the net proceeds of all fines for violation of state laws and all payments for school land leases within the county and shall forward the amounts collected, together with

a detailed statement of the moneys collected to the state treasurer on or before the fifteenth of each month.

15.1-28-03. State tuition fund - Apportionment - Payment. On or before the third Monday in each February, April, August, October, and December, the office of management and budget shall certify to the superintendent of public instruction the amount of the state tuition fund. The superintendent shall apportion the fund among the school districts of the state in proportion to the number of school-age children residing in each district, as shown by the latest enumeration provided for by law and pay the amount apportioned to each school district. The superintendent shall make the payments required by this section at the same time as the per student payments required under chapter 15.1-27.

⁸⁶ **SECTION 13.** Chapter 15.1-29 of the North Dakota Century Code is created and enacted 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. If the student is a kindergarten student, the three-member committee shall apply the same criteria as that specified for elementary students in section 15.1-29-06, except that subsection 2 of section 15.1-29-06 does not apply to an appeal for out-of-state attendance and payment of tuition. 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.

⁸⁶ Section 15.1-29-01 was amended by section 3 of Senate Bill No. 2147, chapter 193, section 15.1-29-02 was amended by section 2 of House Bill No. 1346, chapter 194, section 15.1-29-06 was amended by section 4 of Senate Bill No. 2147, chapter 193, and section 15.1-29-08 was repealed by section 5 of Senate Bill No. 2147, chapter 193.

- 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 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.

15.1-29-02. Education of students in bordering states - Reciprocal contract.

1. The superintendent of public instruction shall pursue a reciprocal contract with the education agency of each bordering state. The contract must address the cost of educating students in the public schools of the bordering state.
2. A school district may comply with the terms of the superintendent's reciprocal contract or, upon providing notice to the superintendent of public instruction, may contract with a school district in a bordering state for the education of students. A contract between school districts supersedes the terms of the superintendent's reciprocal contract. A contract between school districts must provide for the payment of tuition at an agreed-upon amount. The amount of tuition payable per student may not exceed the amount set by the superintendent's reciprocal contract nor may it be less than the per student payment plus tuition apportionment in the North Dakota school district.
3. For purposes of per student payments and tuition apportionment payments, a student who attends school in a bordering state under a contract provided for by this section is deemed to be in attendance in the student's school district of residence. The student's school district of residence is liable to the school district of the bordering state for payments as provided in the contract.
4. If the education agency of a bordering state is not authorized to or refuses to enter into a reciprocal contract with the superintendent of public instruction, a school district in this state may enter into its own contract with a school district in a bordering state for the education of students. A school district in this state may not agree to accept students from a bordering state unless the tuition payable equals or exceeds the

per student payment plus the tuition apportionment payment that the district would have received from this state for a student in the same grade if its student had been attending school in the bordering state.

15.1-29-03. Education of students in other districts - Payment of tuition.

1. After taking into account the best interests of all affected parties, the board of a school district may elect to send its students to another school district. In this instance, the board may pay tuition for the students. The board may arrange, and when petitioned to do so by qualified electors of the district equal in number to at least a majority of those who voted in the most recent annual school district election shall arrange, with other boards to send students to the other districts and to pay for their tuition and transportation.
2. If a district does not provide educational services to an entire grade level, the students in that grade level may attend a public school of their choice outside their district of residence without going through the procedures outlined in section 15.1-29-05. The school district of residence shall pay tuition to the admitting district. For purposes of determining whether educational services are provided to an entire grade level, districts cooperating with each other in the joint provision of educational services under a plan approved by the superintendent of public instruction are considered to be a single district.

15.1-29-04. Payment of tuition by sending districts - Interest on late payments. If a school board approves the payment of tuition for a student attending school in another district or if a district is required to make tuition payments under the provisions of this chapter, the sending district shall pay at least fifty percent of the annual tuition charge to the admitting district on or before December thirty-first and any remaining amount on or before May thirty-first. If payment is not received by the admitting district within thirty days after the date on which payment is due, simple interest at the rate of six percent per annum accrues to any amount due.

15.1-29-05. Payment of tuition - Petition by parent. A student's parent may file a written petition with the board of the student's school district of residence for the payment of tuition in order that the student can attend another school district. Within sixty days after receiving the petition, the board shall meet with the student's parent and render a decision regarding the payment of tuition. If the board does not render a contrary decision within the sixty-day period, the petition is deemed approved. If the petition is approved, the board shall pay the tuition charges. If the petition is denied, the student's parent may file an appeal with the county superintendent of schools.

15.1-29-06. Payment of tuition for grades one through twelve - Appeal - Withholding of state payments.

1. a. Within fifteen days after receipt of an appeal filed under section 15.1-29-05, the county superintendent of schools shall convene a three-member committee consisting of the county superintendent, the state's attorney, and one member appointed by the board of county commissioners for a term of three years. The committee shall consult with the boards of the affected districts and with the student's parent. The committee shall schedule a hearing, giving due notice to each affected board and to the student's parent. The committee shall conduct the hearing in a manner that allows all

- parties to present arguments and responses. The committee shall base its decision regarding the payment of tuition on the grade in which the student is enrolled.
- b. If the student is or during the following school year will be enrolled in any grade from nine through twelve and the committee finds that the attendance of the student is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the student's educational needs, or extreme hardship for the student or the student's family, the committee shall approve the application and the payment of tuition by the student's school district of residence, thereby obligating the district of residence to pay the tuition. The committee's directive regarding the payment of tuition may be for any fixed number of school years, up to the completion of the student's high school education, unless open enrollment is an available option. The decision of the committee may be appealed to the state board of public school education. A decision by the state board is final.
 - c. If the student is or during the following school year will be enrolled in any grade from one through eight and the committee finds that the attendance of the student is necessitated by shorter distances or extreme hardship for the student or the student's family, the committee shall approve the application and the payment of tuition by the student's district of residence, thereby obligating the district of residence to pay the tuition. The committee's directive regarding the payment of tuition is limited to one school year. The student's parent may make subsequent applications for the payment of tuition. The decision of the committee is final and is not subject to appeal.
2. If a student's school district of residence consists of land situated in more than one county, the three-member committee established under subsection 1 must consist of the county superintendent of schools and the state's attorney from the county in which the greatest portion of the school district's land is situated, and an individual appointed for a term of three years by the board of county commissioners representing the county in which the greatest portion of the school district's land is situated.
 3. If the student's school district of residence does not comply with the decision requiring that tuition charges be paid, the board of the admitting district shall notify the superintendent of public instruction. Upon verifying that tuition payments are due the admitting district and are unpaid, the superintendent of public instruction shall withhold all state payments to the student's school district of residence until any tuition due has been fully paid.
 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.

15.1-29-07. Payment of tuition by parent - Content of tuition contract.

1. If the board of a student's school district of residence refuses to pay the tuition for the student to attend school in another district and if the committee established under section 15.1-29-06 denies the petition on appeal, the student's parent may pay the tuition.
2. If the parent chooses to pay the tuition, the parent shall:
 - a. Submit at least fifty percent of the total amount due on the day of enrollment; and
 - b. Provide the board of the admitting district with a written contract agreeing to pay any remaining balance on or before December thirty-first.

15.1-29-08. Payment of tuition - Kindergarten student. If the student is or during the following school year will be enrolled in kindergarten, the board of the student's school district of residence may pay tuition to the receiving district. The board's decision with respect to a kindergarten student is not appealable. If the board of the student's district of residence does not pay the tuition to the admitting district, the student's parent may pay the tuition to the admitting district under the provisions of section 15.1-29-11.

15.1-29-09. Payment of tuition by federal government. An admitting district may accept payments under title 1 of Public Law No. 81-874 [64 Stat. 1100; 20 U.S.C. 236 et seq.] as tuition for a nonresident student if:

1. The student's parent is employed on an installation owned by the federal government;
2. The student's parent resides on an installation owned by the federal government; and
3. The boards of the student's school district of residence and the admitting district agree to accept the payments in lieu of other tuition for the nonresident student.

15.1-29-10. Tuition contracts - Agreement with federal officials. A school board may contract with federal officials for the education of students in a federal school.

15.1-29-11. Admission of students - Conditions. The board of a school district shall admit students from other districts to its schools if:

1. The admission does not create overcrowding; and
2.
 - a. The board of the sending district has entered into a contract with the board of the admitting district regarding the students' attendance;
 - b. Tuition will be paid by the parents of the students from the sending district; or
 - c. The grade level required by the students is not offered by the sending district.

15.1-29-12. Tuition payments - Determination.

1. Except as provided in section 15.1-29-13, a school district sending a student to another district for purposes of education shall pay the full cost of education incurred by the admitting district.
2.
 - a. The admitting district shall determine the cost of education per student for its kindergarten, elementary, and high school students on the basis of its average daily membership and those expenditures permitted in determining the cost of education per student in section 15.1-27-03.
 - b. To the cost of education per student, the admitting district shall add the state average capital outlay per student. The state average capital outlay per student is determined by dividing the total of all school districts' annual expenditures for sinking and interest funds, tax receipts to the building funds, and general fund expenditures for capital outlay by the average daily membership of the state.
 - c. The admitting district shall subtract the following from the amount arrived at under subdivision b:
 - (1) The weighted per student payment received by the admitting district, less the average amount per North Dakota resident student enrolled in the school district realized from the deductions applied under section 15.1-27-06; and
 - (2) Any credit for taxes paid to the admitting district by the student's parent.
 - d. The amount remaining is the full cost of education incurred by the admitting district and the tuition amount payable for the individual student.
3. If the student's school district of residence and the student's parent are both paying tuition, the credit allowed under subdivision c of subsection 2 for taxes paid to the admitting district by the student's parent must be proportionately credited to the student's district of residence and the student's parent.
4. This chapter does not affect the right of a school board to charge and collect tuition from students who are not residents of this state, in accordance with section 15.1-29-02.

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 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.

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 aid:
 - (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 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 payments and transportation aid 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 aid.
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.

15.1-29-15. Levy for tuition payments. If the board of a school district approves tuition payments for students in grades seven through twelve or if the board is required to make tuition payments under this chapter, the board may levy an amount sufficient to meet such payments, pursuant to subdivision c of subsection 1 of section 57-15-14.2.

SECTION 14. Chapter 15.1-30 of the North Dakota Century Code is created and enacted 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. 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.

15.1-30-02. Transportation payments - Board option.

1. The board of a school district in the state may pay to the parent of each student who resides more than two miles [3.22 kilometers] from the public school which the student attends a reasonable sum per day for each day the student attends the school, provided:
 - a. The student is transported to school by an adult member of the student's family;
 - b. The student's transportation is provided in a vehicle furnished by the student's parent;
 - c. The student's transportation is paid for by the student's parent; or
 - d. The cost of providing meals and lodging for the student at a location other than the student's residence is assumed by the student's parent.
2. The board shall calculate the payment provided for in this section according to the distance between the front door of the student's residence and the front door of the school attended by the student, using the most direct public route.

15.1-30-03. Transportation payments - Written request - Waiver. A parent entitled to any payment authorized by a school board under this chapter shall submit to the school district a written request for payment before June thirtieth of each school year or the payment is deemed waived. Any payment not made within one year of the date on which it is requested is deemed to have been refused and the claim is deemed to have expired.

15.1-30-04. Provision of meals and lodging for high school students - Payment permitted - Levy. Instead of providing transportation so that an eligible high school student residing in the district can attend school in another district, a school board may pay a reasonable allowance to the student's parent for costs incurred in the provision of meals and lodging for the student at a location other than the student's residence. A school district that furnishes either transportation or an allowance for the provision of meals and lodging for a student under this section may levy a tax pursuant to subdivision a of subsection 1 of section 57-15-14.2 for this purpose.

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.

15.1-30-06. Transportation - Bids, contracts, bonds.

1. Before the beginning of each school year, the board of a school district that provides transportation shall contract for the provision of transportation services during the school year. Except as provided in section 15.1-30-11, the board shall provide notice of its intent to contract by publishing the time and place for submission of sealed bids in the official newspaper of the school district at least ten days prior to the required date of submission. The notice must:
 - a. Include the route to be covered by each contract;
 - b. Provide that the board reserves the right to reject any and all bids;
 - c. Provide that each successful bidder must submit in a separate envelope a bond in an amount set by the board, provided that the amount of the bond must be at least five hundred dollars;
 - d. Provide that the bond must be conditioned for the faithful performance of the duties set forth in the contract; and
 - e. Provide that any bids submitted name the individual who will operate the vehicle and describe the vehicle.
2. If the transportation vehicle is privately owned, the duration of the contract may not exceed seven years.
3. This section does not apply to a school district that owns its own buses and employs its own busdrivers.

15.1-30-07. Transportation contract - Standard form. The superintendent of public instruction shall prepare a standard transportation contract form and shall provide copies, upon request, to school districts.

15.1-30-08. Transportation contract - Provisions. A transportation contract must:

1. Provide that no vehicle other than that described in the contract may be used to transport students, unless a change is authorized in writing by the board of the school district.
2. Provide that only the individual named in the contract may operate a vehicle used to transport students, unless a change is authorized in writing by the board.
3. Include the transportation routes that were established by the board and which are to be covered by the transportation provider.
4. Set compensation for the provision of transportation.
5. Describe the process by which an equitable adjustment of compensation will be determined and paid if a change in the established transportation routes becomes necessary.

15.1-30-09. Transportation contract - Waiver of provisions. In the case of an emergency or other unforeseen event, the school board president may waive transportation contract provisions requiring that only vehicles described in the contract be used and that the vehicles be operated only by individuals named in the contract. The waiver is valid only until the next regular or special meeting of the board.

15.1-30-10. Transportation contract - Assignment. A transportation contract is assignable only upon written authorization by the school board.

15.1-30-11. Transportation contract - Direct negotiation.

1. Notwithstanding sections 15.1-30-06 and 15.1-30-12, a contract for the transportation of students, originally bid by and let to a contractor, may be renewed:
 - a. Through direct negotiation between the board of a school district and the contractor; or
 - b. Upon sealed bids.
2. If a contract is to be renewed through direct negotiation, the school board shall publish notice in the official newspaper of the district, at least thirty days before the date of renewal, and shall make a good-faith effort to obtain at least two written quotations for the contract. The board shall maintain all quotations received on file for at least one year after their receipt. The quotations are public information.
3. If any written quotations are received, the board may directly negotiate a contract, provided:
 - a. The board shall conduct a public meeting regarding the contract;
 - b. The board provides at least seven days' notice of the public meeting regarding the contract by publication in the official newspaper of the district; and

- c. The public is given an opportunity to appear and comment at the public meeting.
4. All terms of the contract must be negotiated and agreed to in the public meeting.
5. If a contract is to be made upon the receipt of sealed bids, the board shall follow the procedure set forth in section 15.1-30-06 for advertising and awarding the bids.

15.1-30-12. Contract for transportation - Conditions.

1. The board of a school district shall let the contract, except as otherwise provided in section 15.1-30-11, to the lowest responsible bidder who:
 - a. Furnishes a bond approved by the board, as provided for in section 15.1-30-06;
 - b. Agrees to use a vehicle which, in the opinion of the board, meets the standards imposed by the superintendent of public instruction under sections 39-21-27 and 39-21-27.1 and which is safe, comfortable, and suitable for the purpose; and
 - c. Identifies individuals who, in the opinion of the board, are competent and responsible to serve as drivers.
2. The board may not enter a contract for transportation with an individual member of the board.
3. An individual member of the board may serve as the driver of a vehicle identified for use in the transportation contract.

15.1-30-13. Transportation of students - Control and discipline. The driver of a vehicle used to transport students under a contract as provided in this chapter is under the supervision and direction of the school board, the school district superintendent, the school principal, and the teachers of the school while the driver is on duty. The disciplinary authority of the school exists while a student is being transported, by or on behalf of the student's school, and the driver of the vehicle is charged with exercising control and discipline during the transportation.

15.1-30-14. Schoolbus route - Extension into bordering state. The board of a school district may extend its bus route into a bordering state for the purpose of transporting students from the bordering state into this state, provided that the superintendent of public instruction has entered a reciprocal contract with the bordering state under section 15.1-29-02 or that the board has entered a contract with a school district in the bordering state under section 15.1-29-02.

15.1-30-15. Transportation services to nonpublic students - Joint provision of transportation services.

1. If the board of a school district provides transportation services to its students, the board may provide transportation services to students attending nonpublic schools, provided:
 - a. The nonpublic school students are transported only along the bus route established for the public school students;

- b. The nonpublic school students are transported only on the days and at the times that the public school students are transported; and
 - c. The legal passenger capacity of each bus is not exceeded by the transportation of nonpublic school students.
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.

⁸⁷ **SECTION 15.** Chapter 15.1-31 of the North Dakota Century Code is created and enacted as follows:

15.1-31-01. Open enrollment - Procedure.

1. By February first of the school year preceding the year of enrollment, a parent who wishes to enroll a student in a North Dakota school district other than the student's district of residence shall file an application for approval with the board of the student's district of residence. The superintendent of public instruction shall make the application forms available in each school district.
2. By March first of the school year preceding the year of enrollment, the school board of the student's district of residence shall act on the application, notify the parent of the board's decision within five days, and if the application is approved, immediately transmit the application to the admitting district.
3. By April first of the school year preceding the year of enrollment, the board of the admitting district shall approve or deny the application. The board of the admitting district shall notify the board of the district of residence and the student's parent of its decision within five days.

⁸⁷ Section 15.1-31-01 was amended by section 4 of Senate Bill No. 2106, chapter 195, section 15.1-31-06 was amended by section 5 of Senate Bill No. 2106, chapter 195, and section 15.1-31-07 was amended by section 6 of Senate Bill No. 2106, chapter 195.

4. Notice of intent to enroll in the admitting district obligates the student to attend the admitting district during the following school year unless the school boards of the resident and the admitting districts agree in writing to allow the student to transfer back to the resident district or the student's parent relocates to another district.
5. All applications must be reviewed in the order they are received.
6. A student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment. For purposes of determining whether the grade level in which the student requires enrollment is offered, the several school districts cooperating with each other for the joint provision of education services under a plan approved by the superintendent of public instruction must be considered to be a single district.
7. A child placed for purposes other than education in a group or residential care facility or in a residential treatment center is not eligible for open enrollment under this section.
8. The board of a school district of residence and the board of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent, moves from the student's school district of residence to another school district and who wishes to enroll in a school district other than the district to which the student moved.

15.1-31-02. Open enrollment - Grounds for denial - Exception. Except as provided in section 15.1-31-04, the board of a student's school district of residence may deny an application under section 15.1-31-01 only if the application will result in a reduction of the number of students enrolled in the district by more than twenty percent of the average daily membership the previous school year. However, if denying an application would result in the enrollment of children from the same nuclear family in different school districts, the school board of the district of residence may not deny the application.

15.1-31-03. Open enrollment - Per student aid - Tuition apportionment.

1. Once a student is enrolled in an admitting district, the student must remain enrolled in the admitting district until:
 - a. The student graduates;
 - b. The student relocates to another district;
 - c. The student's parent applies for enrollment in another school district; or
 - d. The student's parent notifies the student's school district of residence that the student will attend school in the school district of residence the following year.
2. Payment for per student aid must be made to the admitting district in accordance with chapter 15.1-27.

3. For purposes of tuition apportionment payments, a student whose application is approved under this section is considered a resident of the admitting district.
4. Except as specifically provided in this chapter, chapter 15.1-29 does not apply to students involved in open enrollment.

15.1-31-04. Open enrollment - Students with disabilities - Additional costs. If an application under this chapter is approved for a student with a disability, the board of the student's school district of residence shall pay to the admitting district the costs incurred by the admitting district in providing special education and related services to the student up to a maximum each school year of two and one-half times the state average per student elementary or high school cost, depending on the student's enrollment level, plus twenty percent of all remaining costs. The superintendent of public instruction shall reimburse the admitting district eighty percent of the remainder of the cost of educating the student with disabilities within the limits of legislative appropriations for that purpose.

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.

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 school district participating in an open enrollment program may not give or offer to give a student remuneration, or directly or indirectly exert influence on the student or the student's family, in order to encourage participation in the open enrollment program for the purpose of having the student participate in varsity athletic activities.

15.1-31-07. Students not subject to this chapter. If a student, as a result of a school district dissolution, resides in a district other than the one the student chooses to attend at the time of dissolution, the student is not subject to the provisions of this chapter and may attend school in the 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.

⁸⁸ **SECTION 16.** Chapter 15.1-32 of the North Dakota Century Code is created and enacted as follows:

15.1-32-01. Definitions. As used in this chapter:

1. "Related services" means transportation and developmental and corrective or supportive services required to assist a student with disabilities to benefit from special education.
2. "Special education" means instruction designed to meet the needs of a student with disabilities, transportation, and corrective and supporting services required to assist a student with disabilities in taking advantage of, or responding to, educational programs and opportunities.
3. "Student who is gifted" means an individual who is identified by qualified professionals as being capable of high performance and who needs educational programs and services beyond those normally provided in a regular education program.
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 who is mentally retarded, hearing impaired, deaf, deaf-blind, speech or language impaired, visually impaired, emotionally disturbed, orthopedically impaired, or autistic, and an individual who has a specific learning disability, a traumatic brain injury, or other health impairment.

15.1-32-02. Coordination of special education policies and programs.

The superintendent of public instruction shall establish, within the provisions of this chapter, general state policy regarding special education and shall endeavor to ensure a cooperative special education program coordinating all available services. The superintendent of public instruction shall cooperate with private agencies and solicit their advice and cooperation in the establishment of policy and in the coordination and development of special education programs.

15.1-32-03. Interagency cooperative agreements - Development and implementation. The superintendent of public instruction shall develop and implement interagency agreements with the department of corrections and rehabilitation, the department of human services, the state department of health, and other public and private entities to maximize the state resources available for fulfilling the educationally related service requirements of Public Law No. 94-142 [89 Stat. 773] and section 504 of the Rehabilitation Act of 1973, as amended.

15.1-32-04. Institutions not supervised by public school authorities - Rules. The superintendent of public instruction shall adopt rules governing special education programs in institutions that are supported in whole or in part by the state,

⁸⁸ Section 15.1-32-01 was amended by section 2 of House Bill No. 1142, chapter 196.

but which are not supervised by public school authorities. The rules must be similar to those established for the delivery of special education in a public school.

15.1-32-05. Special education - Cooperation among agencies. The superintendent of public instruction, the state department of health, and the department of human services shall cooperate in planning and coordinating early intervention programs for individuals under the age of three.

15.1-32-06. Director of special education. The superintendent of public instruction shall employ a qualified director of special education and any necessary assistants.

15.1-32-07. Director of special education - Assistance to school districts. The director of special education shall assist school districts with the development and administration of special education programs.

15.1-32-08. School districts - Provision of special education. Each school district shall provide special education, singly or jointly with other districts, in accordance with this chapter. Each school district and entity providing special education shall cooperate with the director of special education and with the institutions of this state in the provision of special education.

15.1-32-09. Superintendent of public instruction - Rules. The superintendent of public instruction shall adopt rules for the provision of special education to students with disabilities and for the administration of this chapter.

15.1-32-10. Gifted students. A school district may provide special education to students who are gifted.

15.1-32-11. School district records - Students with disabilities. Each school district shall make and keep current a record of all students with disabilities who are residents of the district.

15.1-32-12. Multidisciplinary teams - Individualized education programs - Services plans. If a school district has evidence of a student's disability, the school district shall convene a multidisciplinary team consisting of educational professionals, medical professionals, and the student's parent to share assessment information related to the student's suspected disability. If necessary, the team shall develop an individualized education program or services plan and make recommendations for the delivery of special education and related services to the student.

15.1-32-13. Related services - Insurance options - School district responsibility. Each school district shall require that all family insurance options be exhausted in paying the costs of determining a student's medically related disability and in paying for the provision of related services to the student, provided there is no financial loss to the student or the student's parent. The school district is responsible for all costs not covered by the family's insurance.

15.1-32-14. Special education per student payments.

1. A student with disabilities who receives special education services is deemed to be enrolled in the student's school district of residence for purposes of calculating per student payments.

2. An additional prorated per student payment may be made if a student with disabilities attends a special education summer program approved by the superintendent of public instruction, provided the student's individualized education program or services plan requires that the student attend a special education summer program.
3. If a student who is enrolled in a nonpublic school receives special education services in a public school, the superintendent of public instruction shall forward a proportionate per student payment to the school district in which the student receives the services.
4. a. If in the opinion of an individualized education program team or a services plan team a student is unable to attend a public school in the special education unit to which the student's school district of residence belongs, the student's school district of residence shall contract with another public school that:
 - (1) Does not belong to the same special education unit;
 - (2) Is located in this state;
 - (3) Is willing to admit the student; and
 - (4) Is able to provide appropriate services to the student.
- b. The superintendent of public instruction shall approve in advance the terms of the contract and the services to be provided by the admitting school.
- c. The contract must provide that the student's school district of residence agrees to pay to the district in which the admitting school is located, as part of the cost of educating the student for the school year, an amount equal to two and one-half times the state average per student elementary or high school cost, depending upon the student's level of enrollment, plus twenty percent of all remaining costs. The amount paid may not exceed the actual per student cost incurred by the admitting school.
- d. The liability of the student's school district of residence must be reduced proportionately if the student attends the admitting school for less than an entire school year.
- e. Upon being notified by the admitting district that tuition payments provided for by this section are due and unpaid, the superintendent of public instruction, after verification, shall withhold all state aid payments to which the student's school district of residence is entitled until the tuition due has been paid.
- f. The superintendent of public instruction shall provide to the school district, within the limits of legislative appropriations, an amount equal to eighty percent of the remainder of the actual cost of educating the student with disabilities not covered by other payments or credits.

15.1-32-15. Student with disabilities - Attendance at private institution or out-of-state public school.

1. If in the opinion of an individualized education program team or an education services team a student is unable to attend a public school in the student's school district of residence because of a physical disability, a mental disability, or a learning disability, and if no public school in the state will accept the student and provide the necessary services, the student's school district of residence shall contract with:
 - a. A private, accredited, nonsectarian, nonprofit institution that is located within or outside of this state and which has the proper facilities for the education of the student; or
 - b. A public school located outside of this state that has proper facilities for the education of the student.
2. The superintendent of public instruction shall approve in advance the terms of the contract and the services to be provided by the admitting institution or school.
3. The contract must provide that the student's school district of residence shall pay to the institution or school, as part of the cost of educating the student, an amount for the school year equal to two and one-half times the state average per student elementary or high school cost, depending upon the student's level of enrollment, plus twenty percent of all remaining costs.
4. The amount paid may not exceed the actual per student cost incurred by the institution or school.
5. The superintendent of public instruction shall provide to the student's school district of residence, within the limits of legislative appropriations, an amount equal to eighty percent of the remainder of the actual cost of educating the student with disabilities not covered by other payments or credits.
6. The school district of residence is entitled to the per student payment for a student who receives services under this section.

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.

15.1-32-17. Extended educational program. A student with disabilities is entitled to an educational program that extends beyond the normal school calendar if the student's individualized education program team or services team determines that regression would be caused by an interruption in the student's educational program and that the student's limited recoupment capacity makes it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers which the student would otherwise be expected to reach.

15.1-32-18. Cost - Liability of school district for special education. If the cost of providing special education and related services to a student with disabilities, as determined by the superintendent of public instruction, exceeds the reimbursement provided by the state, the student's school district of residence is liable to pay for each such student an amount over the state reimbursement up to a maximum each school year of two and one-half times the state average per student elementary cost of education or high school cost of education, depending on the student's level of enrollment, plus twenty percent of all remaining costs. The two and one-half times amount includes the amount that the school district is required to pay under section 15.1-32-14. The state is liable for eighty percent of the remaining cost of education and related services for each such student with disabilities within the limits of legislative appropriations.

15.1-32-19. Boarding care costs - Reimbursement of school district. The superintendent of public instruction, within the limits of legislative appropriation, shall reimburse a student's school district of residence an amount equal to eighty percent of the room and board costs paid for a student with disabilities who is placed in a facility located outside of the student's school district of residence in order to receive special education services not available within the student's school district of residence. The student's school district of residence is liable for any room and board costs in excess of those reimbursed as provided in this section. The placement of a student with disabilities in a public or private facility will be made by a school district. The placement of a student with disabilities in congregate care will be made in a facility designated by the department of human services.

15.1-32-20. School district financing - Levy. The board of a school district may budget an amount from the school district general fund for its special education program. With approval by a majority of the board, the school board may levy a tax pursuant to subdivision d of subsection 1 of section 57-15-14.2 for the purpose of carrying out a special education program, separately or jointly with other school districts.

15.1-32-21. Federal aid for special education.

1. The superintendent of public instruction may apply for, receive, and administer federal aid available for the provision of special education services to students.
2. The superintendent may expend any federal aid received in the administration of this chapter within the limits of legislative appropriations.
3. School districts and multidistrict special education units are deemed to be local education agencies for purposes related to the funding of special education services within the limits of legislative appropriations.
4. The school for the blind, the school for the deaf, the developmental center at westwood park, Grafton, the youth correctional center, and the Jamestown state hospital may apply for, receive, and administer federal aid and may expend federal aid within the limits of legislative appropriations.

15.1-32-22. Right to educational services - Attorneys' fees. In any judicial proceeding to enforce the rights of an individual with disabilities to receive educational services, the court may award reasonable attorneys' fees and costs to a prevailing parent or to the individual with disabilities.

15.1-32-23. Special education teachers - Credentialing process. The superintendent of public instruction may not change the credentialing process for special education teachers as it is in effect on July 1, 2001, without first convening a meeting to include representatives of the North Dakota council of education leaders, the council of exceptional children, the North Dakota education association, and the North Dakota school boards association. The purpose of the meeting is to receive comments regarding the proposed changes, the applicability of the proposed changes, including the scheduling, the manner of implementation, associated costs, and the short-term and long-term effects of the proposed changes. If, within thirty days after the date of the meeting, members of any two representative groups present at the meeting object in writing to the proposed changes, the superintendent may not implement the proposed changes before July 1, 2003.

SECTION 17. Chapter 15.1-33 of the North Dakota Century Code is created and enacted as follows:

15.1-33-01. Multidistrict special education unit - Corporation. Each multidistrict special education unit is a body corporate and has all the powers and duties usual to corporations for public purposes or as conferred upon it by law.

15.1-33-02. Multidistrict special education units - School district participation. A school district may join a multidistrict special education unit or together with other school districts form a multidistrict special education unit for purposes of planning and delivering special education and related services. Each school district shall participate in a multidistrict special education unit or have on file with the superintendent of public instruction a plan for providing special education and related services as a single district. If a school district wishes to join a multidistrict special education unit from which it has been excluded, the school district may petition the superintendent of public instruction. A school district may appeal a decision of the superintendent under this section to the state board of public school education.

15.1-33-03. Multidistrict special education unit - Organizational plan - Contents. Each multidistrict special education unit shall maintain an organizational plan on file with the superintendent of public instruction. The organizational plan must include:

1. A list of the unit's board members.
2. A description of how each school district is represented on the board.
3. The method used to select officers.
4. The terms of office.
5. Scheduled meeting times.
6. Quorum requirements.
7. Any other items required through rule by the superintendent of public instruction.

15.1-33-04. Multidistrict special education unit - Board member appointments. The organizational plan of each multidistrict special education unit must provide for the manner in which board members are appointed.

15.1-33-05. Multidistrict special education unit - Board members - Compensation. The board of each multidistrict special education unit 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.

15.1-33-06. Withdrawal from a multidistrict program. In order for a school district to withdraw from a multidistrict special education unit, the following must occur on or before March first before the school year for which the withdrawal is to be effective:

1. The board of the withdrawing school district shall approve the withdrawal.
2. The board of the withdrawing school district shall inform the board of the multidistrict special education unit that it has elected to withdraw from the unit.
3. The board of the withdrawing school district shall submit a plan to the superintendent of public instruction regarding the provision of services to students with disabilities.

15.1-33-07. Multidistrict special education unit - Board - Preparation of annual plan. The board of a multidistrict special education unit shall prepare, on behalf of the participating school districts, an annual plan regarding the provision of special education and related services and shall submit the plan to the superintendent of public instruction for approval.

15.1-33-08. Multidistrict special education unit - Board - Powers. The board of a multidistrict special education unit may:

1. Receive state and federal funds and distribute them to each participating school district.
2. Employ personnel necessary to carry out administrative services, itinerant instruction, coordinative services, and related services.
3. Receive private and public funds and expend such funds for the compensation of personnel and for the payment of the board's expenses.
4. Contract with the board of any school district for the provision of special education and related services.

15.1-33-09. Multidistrict special education unit - Board - Coordination of student transportation. The board of a multidistrict special education unit shall plan and coordinate the transportation of each student receiving special education services within the unit.

15.1-33-10. Multidistrict special education board - Rights of employees. Any individual employed by the board of a multidistrict special education unit has the

same statutory rights as those accorded to an individual employed by a school district for the same purpose.

SECTION 18. Chapter 15.1-34 of the North Dakota Century Code is created and enacted as follows:

15.1-34-01. Definitions. As used in this chapter:

1. "Boarding home care for a student with disabilities" means the provision of food, shelter, security, and safety, on a twenty-four-hour basis, to an individual who has reached the age of three years 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.
2. "Department" means the department of human services.
3. "Family boarding home" means a private residence at which boarding home care is regularly provided by the owner or lessee to no more than four students with disabilities. The limit of four students may be exceeded if all the students boarding at the home are related to each other by blood or marriage.
4. "Registration" means the process by which the department maintains a record of all family boarding homes, prescribes standards and adopts rules under section 15.1-34-14, and requires the operator of a home to certify that the operator has complied with the prescribed standards and adopted rules.
5. "Registration certificate" means a document issued by the department to provide public notice that the certificate holder is in compliance with this chapter and the applicable rules and standards prescribed by the department.
6. "Relative" means a grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt of the student by marriage, blood, or adoption.

15.1-34-02. Students with disabilities - Boarding home care - Registration certificate. A person may not establish or operate a family boarding home unless the person first obtains a registration certificate from the department. This section does not apply if the student's boarding and care are provided in:

1. The home of a relative.
2. A home or institution under the management and control of the state or the board of a school district.
3. A home providing "foster care for children" as defined in section 50-11-00.1.

15.1-34-03. Registration certificate - Application.

1. In order to obtain a registration certificate for a family boarding home, a person shall complete an application form available from the department.
2. The department may investigate the applicant's activities and may inspect the home for which the registration is sought.
3. The department shall grant the registration certificate within ten working days from the date the department receives the application if:
 - a. The home is in sanitary condition;
 - b. The home is properly equipped to provide for the health and safety of student boarders; and
 - c. The individual in charge of the home and all assistants are qualified to fulfill the duties required of them under this chapter and under any rules or standards prescribed by the department.
4. A registration certificate issued under this section is effective for up to two years.

15.1-34-04. Boarding home fire inspection - Report. The state department of health, the state fire marshal, or a designee of the state fire marshal shall inspect any home for which a registration certificate is sought if requested to do so by the department. The entity conducting the inspection under this section shall prepare an inspection report and present the report to the department.

15.1-34-05. Boarding home - Conditions - Inspection - Investigation of owner or operator. At any time, the department or its authorized agents may inspect the conditions of a family boarding home and investigate the qualifications of the owner or operator.

15.1-34-06. Conviction - Effect on registration - Exceptions. A person who has been convicted of an offense may not be disqualified from registration under this chapter, unless:

1. The department determines that the offense has a direct bearing upon the person's ability to serve the public as an owner or operator of a boarding home for students with disabilities; or
2. Following conviction for any offense, the department deems that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

15.1-34-07. Registration certificate - Denial - Administrative hearing. If after reviewing a person's application for a registration certificate the department elects to deny the application, the department shall serve the applicant with notice of the denial and with the reasons for the denial. The department shall hold an administrative hearing under chapter 28-32 regarding the person's application and its subsequent denial if requested to do so by the applicant within ten days from the date on which the department served the notice of denial.

15.1-34-08. Registration certificate - Information. The registration certificate must indicate the name of the owner or operator of the boarding home, the location of the boarding home, and the maximum number of students with disabilities who, at any one time, may board at the home.

15.1-34-09. Records - Maintenance - Examination. Any person to whom a registration certificate has been issued shall:

1. Maintain records regarding each student for whom care is provided, as directed by the department;
2. Submit forms and other information regarding each student for whom care is provided, as directed by the department; and
3. Allow department personnel and authorized agents of the department to examine all books, records, and reports regarding the home and each student for whom care is provided.

15.1-34-10. Records - Students - Confidentiality. All records and information regarding a student for whom care is provided under this chapter are confidential and may be disclosed only:

1. As part of a judicial proceeding;
2. To officers of the law;
3. To representatives of a governmental entity;
4. To the parent of a student for whom care is provided under this chapter; and
5. To any person who in the opinion of the department has, or may acquire, an advocacy function on behalf of a student for whom care is provided under this chapter.

15.1-34-11. Registration certificate - Revocation. The department may revoke a registration certificate issued under this chapter if:

1. The home is in an unsanitary condition.
2. The home is not properly equipped to provide for the health and safety of the students.
3. The individual in charge of the home and all assistants are not qualified to fulfill the duties required of them under this chapter and under any rules adopted by the department.
4. The owner or operator does not comply with the standards prescribed by the department.
5. The registration certificate was issued as a result of an application that contained fraudulent information or an untrue representation.
6. The person to whom the registration certificate was issued violated a rule adopted by the department.
7. The person to whom the registration certificate was issued is found guilty of an offense which, in the determination of the department, has a direct bearing upon the person's ability to serve the public as an owner or operator of a boarding home for students with disabilities.

8. The person to whom the registration certificate was issued is found guilty of any offense and the department determines that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

15.1-34-12. Registration certificate - Revocation - Administrative hearing. Before the department may revoke a person's registration certificate, the department shall serve the holder of the registration certificate with notice of the revocation and the grounds for the revocation. The department shall hold an administrative hearing under chapter 28-32 regarding the revocation of the person's registration certificate, if requested to do so by the holder of the registration certificate within ten days from the date on which the department served the notice of revocation.

15.1-34-13. Student with disabilities - Placement by governmental entity - Requirements. A governmental entity may not provide for the placement of a student with disabilities in a family boarding home unless the person operating the home:

1. Has obtained a registration certificate; or
2. Is exempt from the registration requirement under subsection 1 or 2 of section 15.1-34-02 and complies with all applicable standards and rules adopted by the department.

15.1-34-14. Minimum standards - Rules - Inspection by governmental entity. The department may:

1. Establish standards for the registration and operation of a family boarding home.
2. Allow the application of alternate standards, if appropriate.
3. Adopt rules governing the provision of boarding home care to students with disabilities.
4. Authorize a governmental entity to:
 - a. Inspect any home for which a registration certificate is sought under this chapter; and
 - b. Certify that the home meets the requirements of this chapter and any standards set by the department.

15.1-34-15. Penalty. A person who violates this chapter is guilty of a class B misdemeanor.

SECTION 19. Chapter 15.1-35 of the North Dakota Century Code is created and enacted as follows:

15.1-35-01. Definitions. In this chapter unless the context otherwise requires:

1. "Child nutrition program" means any program that provides federal assistance for the provision of nutritious meals to children.

2. "Food distribution program" means any program that provides federally donated agricultural commodities, products, and other foods, or cash payments in lieu of foods, to eligible participants.
3. "School" means a public school or a not-for-profit nonpublic school.

15.1-35-02. Federal funds - Contracts - Expenditures. The superintendent of public instruction shall administer federal funds designed to provide nonprofit child nutrition programs and food distribution programs for eligible participants. The superintendent of public instruction may enter a contract with any agency of the federal government so that the state may use available federal funds to the fullest extent possible. The superintendent of public instruction shall receive, deposit, and disburse any funds received in accordance with state and federal law.

15.1-35-03. Administration of program - Rules - Disbursement of funds. In order to provide for the establishment, maintenance, operation, and expansion of any child nutrition and food distribution program, the superintendent of public instruction may:

1. Contract with any public or private entity.
2. Adopt rules.
3. Employ personnel.
4. Provide technical advice and assistance to any public or private entity.
5. Assist in the training of personnel.
6. Disburse state and federal funds.
7. Take any other necessary action, in accordance with state and federal law.

15.1-35-04. Board of a school district - Use of funds. The board of a school district may expend any funds or gifts received by it under this chapter, and any funds received from the sale of meals under a child nutrition and food distribution program.

15.1-35-05. Accounts and records - Rules - Reporting - Availability. The superintendent of public instruction shall adopt rules regarding recordkeeping, accounting, and reporting by any public or private entity participating in a child nutrition or food distribution program. All accounts and records must be available for inspection and audit at any time by authorized officials and must be preserved for the period of time prescribed by the superintendent of public instruction. The superintendent of public instruction shall conduct or cause to be conducted audits, inspections, and administrative reviews of accounts, records, and operations with respect to child nutrition and food distribution programs, as necessary to determine whether the participants are complying with the terms of any contracts entered under this chapter, to determine whether the participants are following the rules adopted under this chapter, and to ensure that child nutrition and food distribution programs are effectively administered.

15.1-35-06. Studies - Appraisals - Reports to governor. In cooperation with other public and private entities, the superintendent of public instruction may:

1. Study methods to improve and expand child nutrition and food distribution programs;
2. Study methods to promote nutrition education in schools;
3. Conduct appraisals regarding the nutritive benefits and other benefits of child nutrition and food distribution programs; and
4. Report the findings and recommendations to the governor.

15.1-35-07. Food service personnel - Training. Each individual who manages the food service operation of a public or nonprofit private entity, with which the superintendent of public instruction has entered a contract under this chapter, shall undergo initial and continuing training regarding the safe handling, preparation, and service of food. The superintendent of public instruction shall adopt rules prescribing the nature, scope, and frequency of the training.

SECTION 20. Chapter 15.1-36 of the North Dakota Century Code is created and enacted as follows:

15.1-36-01. School construction projects - Approval.

1. Notwithstanding the powers and duties of school boards provided by law, the superintendent of public instruction shall approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before commencement of the project if the cost of the project, as estimated by the school board, is in excess of twenty-five thousand dollars.
2. The superintendent of public instruction may not approve a project unless the school district proposing the project:
 - a. Demonstrates the need for the project, the educational utility of the project, and the ability to sustain a stable or increasing student enrollment for a period of time at least equal to the anticipated usable life of the project or demonstrates potential utilization of the project by a future reorganized school district; and
 - b. Demonstrates the capacity to pay for the project under rules adopted by the superintendent of public instruction pursuant to chapter 28-32 after receiving input from the state board of public school education.
3. If the superintendent of public instruction denies the project, the school board may appeal the superintendent's decision to the state board of public school education. The decision of the state board is final.
4. This section does not apply to any construction, purchase, repair, improvement, renovation, or modernization required as part of a plan of correction approved by the state fire marshal under section 15.1-06-09 unless the cost of the improvements exceeds seventy-five thousand dollars.
5. For purposes of this chapter, "facility" includes a public school parking lot, public school athletic complex, or any other improvement to real property owned by the school district.

15.1-36-02. School construction projects - Loans.

1. The board of university and school lands may authorize the use of moneys in the coal development trust fund established pursuant to section 21 of article X of the Constitution of North Dakota and subsection 1 of section 57-62-02 to provide school construction loans, as described in this chapter. The outstanding principal balance of loans under this chapter may not exceed forty million dollars. The board may adopt policies and rules governing school construction loans.
2. In order to be eligible for a loan under this section, the board of a school district shall:
 - a. Obtain the approval of the superintendent of public instruction for its construction project under section 15.1-36-01; and
 - b. Submit to the superintendent of public instruction an application containing all information deemed necessary by the superintendent, including potential alternative sources or methods of financing the construction project.
3. The board of a school district may submit its loan application to the superintendent of public instruction before or after receiving authorization of a bond issue in accordance with chapter 21-03. If the vote to authorize a bond issue precedes the application for a loan, the application must be acted upon by the superintendent expeditiously but no later than one hundred eighty days from the date it is received by the superintendent.
4. The superintendent of public instruction shall consider each loan application in the order it received approval under section 15.1-36-01.
5. If the superintendent of public instruction approves the loan, the superintendent may determine the loan amount. In determining the amount of a loan, the superintendent shall take into account the cost of the construction project and the fiscal capacity of the school district.
6. If the superintendent of public instruction approves the loan, the superintendent may determine the interest rate to be paid. The interest rate on a loan under this section may not exceed a rate of two percent below the net interest rate on comparable tax-exempt obligations as determined on the date the application is approved by the superintendent pursuant to section 15.1-36-01. The interest rate may not exceed six percent.
7. A school district may not receive a loan under this section unless the superintendent of public instruction determines that the district has an existing indebtedness equal to at least fifteen percent of its taxable valuation. In determining a school district's existing indebtedness, the superintendent shall include outstanding indebtedness authorized by an election under section 21-03-07 but not issued and indebtedness authorized to be paid with dedicated tax levies under subsection 7 of section 21-03-07 but not issued.
8. The superintendent of public instruction may adopt rules governing school construction loans.

9. For purposes of this section, a construction project means the purchase, lease, erection, or improvement of any structure or facility by a school board, provided the acquisition or activity is within a school board's authority and further provided that the acquisition or activity is estimated to cost in excess of fifty thousand dollars.

15.1-36-03. School construction project loans - Management by Bank of North Dakota. If the superintendent of public instruction approves a loan application under section 15.1-36-02, the superintendent shall forward the application to the Bank of North Dakota. The Bank shall manage and service each school construction loan issued under this chapter and shall execute all necessary loan instruments. The Bank may charge a loan recipient a fee for managing and servicing the loan. The Bank shall receive payments of principal and interest from the school districts and shall remit the payments of principal and interest to the board of university and school lands. The board shall use or deposit the payments in accordance with section 57-62-02 and section 21 of article X of the Constitution of North Dakota.

15.1-36-04. Evidences of indebtedness. The board of a school district may issue and sell evidences of indebtedness under chapter 21-03 to finance the construction or improvement of a project approved under this chapter. The principal amount of the loan and the evidences of indebtedness to repay the loan may not exceed the lesser of thirty percent of the school district's taxable valuation or five million dollars. Evidences of indebtedness issued under this chapter constitute a general obligation of the school district.

15.1-36-05. Construction of public school building - Violations - Penalty.

1. A person is guilty of an infraction if the person:
 - a. Draws plans or specifications for the construction of a public school building or facility in violation of this chapter;
 - b. Superintends the construction of a public school building or facility in violation of this chapter;
 - c. Constructs a public school building or facility in violation of this chapter; or
 - d. Violates any other provision of this chapter.
2. A member of a school board is guilty of an infraction if the member concurred in a violation of this chapter by the board.

SECTION 21. REPEAL. Chapters 15-21.1, 15-29, 15-34.1, 15-34.2, 15-35, 15-36, 15-37, 15-38, 15-38.1, 15-38.2, 15-40.1, 15-40.2, 15-40.3, 15-41, 15-43, 15-44, 15-45, 15-47, 15-54, 15-59, 15-59.2, 15-59.3, and 15-60 of the North Dakota Century Code are repealed.

Approved May 4, 2001
Filed May 8, 2001

CHAPTER 182

HOUSE BILL NO. 1326

(Representatives Grande, Brandenburg)
(Senators Klein, Solberg)

EDUCATION STANDARDS AND PRACTICES BOARD MEMBERSHIP

AN ACT to amend and reenact sections 15-36-11.1 and 15-38-17 of the North Dakota Century Code or in the alternative to amend and reenact section 15.1-13-02, subsection 3 of section 15.1-13-17, and subsection 2 of section 15.1-13-29 of the North Dakota Century Code, relating to the membership of the education standards and practices board and the assessment of fines; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-36-11.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-36-11.1. Exception to certificate requirement. An individual without a valid certificate who is teaching under contract with a school may teach and be employed to teach if approved by the education standards and practices board. The education standards and practices board shall establish by rule the terms and conditions of approval. The terms and conditions may include the payment of fines a fine to the board in an amount not exceeding two hundred fifty dollars per incident, enrollment in and completion of continuing education courses, and a deadline for filing a completed application. Approval to teach and be employed to teach without a valid North Dakota certificate may only be granted if the individual has previously held a valid North Dakota certificate, currently holds a valid teaching certificate or license in another jurisdiction, or has filed a completed application with the board.

SECTION 2. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-38-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-38-17. Education standards and practices board and administrator's professional practices board.

1. The education standards and practices board consists of ~~nine~~ ten members. The governor shall appoint four classroom teachers from public schools, one classroom teacher from a private school, ~~one~~ two school board ~~member~~ members, two school administrators, and one dean of a college of education or chairman of a department of education.
2. The superintendent of public instruction or the superintendent's designee shall serve as a nonvoting ex officio member.
3. The administrator's professional practices board consists of ~~five~~ six members ~~from~~ of the education standards and practices board. The

administrator's professional practices board includes the two school administrators who are members of the education standards and practices board, the ~~one~~ two school board ~~member~~ members who ~~is a member~~ are members of the education standards and practices board, and two teacher members who are members of and are selected by the education standards and practices board.

4. The term of office of members of the education standards and practices board and the administrator's professional practices board shall be three years commencing on July first of the year of the appointment.
5. Vacancies must be filled for an unexpired term in the same manner as original appointments.
6. A person may not serve for more than two consecutive terms as a member of either board. ~~Members of the current teachers' professional practices commission may serve out their remaining terms.~~

The education standards and practices board and the administrator's professional practices board shall each annually select a chairman and vice chairman, and the executive director of the education standards and practices board or the executive director's designee shall serve as secretary. Meetings of either board must be held after ten days' notice to all members at the call of the chairman or upon request in writing of a majority of either board. A majority constitutes a quorum and a majority of the quorum has authority to act upon any matter properly before either board. Each board shall adopt its own rules of order and procedure not inconsistent with sections 15-38-16 through 15-38-19 and shall hold meetings pursuant to the provisions of sections 15-38-16 through 15-38-19.

The members of each board are entitled to receive twenty-five dollars for each day actually engaged in the service of the appropriate board and must be paid actual and necessary traveling and other expenses at the same rate as for employees of the state. A member of either board may not lose the member's regular salary or the above compensation while serving on official business of the appropriate board.

⁸⁹ **SECTION 3. AMENDMENT.** Section 15.1-13-02 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

15.1-13-02. Education standards and practices board - Membership.

1. The governor shall appoint to the education standards and practices board:
 - a. Four individuals who are public school classroom teachers;
 - b. One individual who is a nonpublic school classroom teacher;

⁸⁹ Section 15.1-13-02 was created by section 1 of House Bill No. 1045, chapter 181.

- c. ~~One individual~~ Two individuals who ~~is a~~ are school board ~~member~~ members;
 - d. Two individuals who are administrators; and
 - e. One dean of a college of education or chairman of a department of education.
2. The superintendent of public instruction or the superintendent's designee shall serve as a nonvoting ex officio member.

⁹⁰ **SECTION 4. AMENDMENT.** Subsection 3 of section 15.1-13-17 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

3. The board shall adopt rules establishing the terms and conditions under which an individual may be approved to teach, as provided for in this section. The terms and conditions may include the payment of a fine to the board in an amount not exceeding two hundred fifty dollars per incident, enrollment in and completion of continuing education courses, and submission of a completed application for licensure by a date certain.

⁹¹ **SECTION 5. AMENDMENT.** Subsection 2 of section 15.1-13-29 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

2. The subcommittee must consist of the two board members who are administrators, the two board ~~member who is a~~ members who are school board ~~member~~ members, and two board members who are teachers and who have been appointed to the subcommittee by the board.

SECTION 6. EFFECTIVE DATE. This Act becomes effective on July 1, 2001.

Approved May 4, 2001
Filed May 8, 2001

⁹⁰ Section 15.1-13-17 was created by section 1 of House Bill No. 1045, chapter 181.

⁹¹ Section 15.1-13-29 was created by section 1 of House Bill No. 1045, chapter 181.

CHAPTER 183

SENATE BILL NO. 2412

(Senators Heitkamp, Flakoll, Freborg, Kelsh, Krauter)

TEACHER LIFETIME LICENSURE

AN ACT to create and enact a new section to chapter 15-36 of the North Dakota Century Code or in the alternative to create and enact a new section to chapter 15.1-13 of the North Dakota Century Code, relating to lifetime licensure for teachers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. If House Bill No. 1045 does not become effective, a new section to chapter 15-36 of the North Dakota Century Code is created and enacted as follows:

Teaching license - Lifetime licensure. If an individual has been licensed to teach in this state for a period of thirty years, the education standards and practices board shall grant the individual lifetime licensure. Nothing in this section precludes the board from taking any action against an individual's lifetime license if the board determines that the action is warranted under this chapter or chapter 15-38.

SECTION 2. A new section to chapter 15.1-13 of the North Dakota Century Code is created and enacted as follows:

Teaching license - Lifetime licensure. If an individual has been licensed to teach in this state for a period of thirty years, the education standards and practices board shall grant the individual lifetime licensure. Nothing in this section precludes the board from taking any action against an individual's lifetime license if the board determines that the action is warranted under this chapter.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 184

HOUSE BILL NO. 1225

(Representatives Grosz, Kasper, Tieman)

TEACHER BACKGROUND CHECKS

AN ACT to amend and reenact section 15-38-18.2 of the North Dakota Century Code or in the alternative to amend and reenact section 15.1-13-14 of the North Dakota Century Code, relating to background checks for teacher licensure applicants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-38-18.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-38-18.2. Education standards and practices board - Initial licensure of teachers - Application fee - Background - Provisional teaching certificates. The education standards and practices board may charge an application fee established by the board by rule. The education standards and practices board shall check, or cause to be checked, the background of each applicant for initial licensure as a teacher. The board shall require each applicant for licensure to file a complete set of the applicant'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 state 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 applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure. The board may adopt by rule, procedures for issuing forty-day provisional teaching certificates to applicants for initial licensure pending completion of the background check. A provisional teaching certificate may be renewed upon approval of the board. An applicant for a provisional teaching certificate may be charged a fee established by the board by rule, but no fee may be imposed for the renewal of a provisional teaching certificate.

⁹² **SECTION 2. AMENDMENT.** Section 15.1-13-14 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

⁹² Section 15.1-13-14 was created by section 1 of House Bill No. 1045, chapter 181.

15.1-13-14. Initial licensure of teachers - Background check. The board shall check, or cause to be checked, the background of each applicant for initial licensure as a teacher. The board shall require each applicant for licensure to file a complete set of the applicant'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 applicant. Criminal history records provided to the board pursuant to this section are confidential and closed to the public and may only be used by the board for determining an applicant's eligibility for licensure and obtaining documentation to support a denial of licensure.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 185

SENATE BILL NO. 2366

(Senators Kringstad, Robinson, Stenehjem)
(Representatives Boehm, Schmidt)

EDUCATION FACTFINDING COMMISSION COMPENSATION

AN ACT to amend and reenact section 15-38.1-04 of the North Dakota Century Code or in the alternative to amend and reenact sections 15.1-16-03 and 15.1-16-04 of the North Dakota Century Code, relating to compensation for factfinders and members of the education factfinding commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-38.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-38.1-04. Compensation of commission and factfinders. Members of the commission are entitled to receive compensation at the rate of ~~sixty-two~~ eighty dollars ~~and fifty cents~~ per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings or performing duties directed by the commission. Factfinders appointed by the commission, ~~including other than~~ commission members serving as factfinders, are entitled to reimbursement for expenses in the same manner as members of the commission and to compensation as established by the commission.

⁹³ **SECTION 2. AMENDMENT.** Section 15.1-16-03 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

15.1-16-03. Education factfinding commission - Compensation. Each member of the commission is entitled to receive compensation at the rate of ~~sixty-two~~ eighty dollars ~~and fifty cents~~ per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings or performing duties directed by the commission.

⁹⁴ **SECTION 3. AMENDMENT.** Section 15.1-16-04 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

⁹³ Section 15.1-16-03 was created by section 4 of House Bill No. 1045, chapter 181.

⁹⁴ Section 15.1-16-04 was created by section 4 of House Bill No. 1045, chapter 181.

15.1-16-04. Education factfinders - Compensation. Each factfinder appointed by the education factfinding commission, ~~including each other than a~~ commission member who serves as a factfinder, is entitled to receive compensation at the rate of ~~sixty-two~~ eighty dollars ~~and fifty cents~~ per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings or performing duties directed by the commission.

Approved March 16, 2001

Filed March 16, 2001

CHAPTER 186

HOUSE BILL NO. 1465

(Representatives Froelich, Grumbo, D. Johnson)

TEACHER MENTAL RETARDATION AND SPECIAL EDUCATION CREDENTIAL

AN ACT to provide for a mental retardation credential; to create and enact two new sections to chapter 15-47 of the North Dakota Century Code or in the alternative to create and enact two new sections to chapter 15.1-18 of the North Dakota Century Code, relating to the special education strategist credential; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. If House Bill No. 1045 does not become effective, a new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Special education strategist credential. In addition to any other credential, the superintendent of public instruction shall implement a special education strategist credential, effective August 1, 2001. Any individual who obtains a special education strategist credential and meets all other teacher licensure requirements imposed by statute may provide special education services in the areas of mental retardation, emotional disturbance, and specific learning disabilities.

SECTION 2. If House Bill No. 1045 does not become effective, a new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Provisional special education strategist credential. Beginning August 1, 2001, upon application the superintendent of public instruction shall issue a provisional special education strategist credential to any 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 who holds a credential applicable to the areas of mental retardation, emotional disturbance, or specific learning disabilities. The provisional credential must be made available to the individual for the lesser of three years or the period of time required by the individual to complete the requirements for a special education strategist credential.

SECTION 3. A new section to chapter 15.1-18 of the North Dakota Century Code is created and enacted as follows:

Special education strategist credential. In addition to any other credential, the superintendent of public instruction shall implement a special education strategist credential, effective August 1, 2001. Any individual who obtains a special education strategist credential and meets all other teacher licensure requirements imposed by statute may provide special education services in the areas of mental retardation, emotional disturbance, and specific learning disabilities.

SECTION 4. A new section to chapter 15.1-18 of the North Dakota Century Code is created and enacted as follows:

Provisional special education strategist credential. Beginning August 1, 2001, upon application the superintendent of public instruction shall issue a provisional special education strategist credential to any 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 who holds a credential applicable to the areas of mental retardation, emotional disturbance, or specific learning disabilities. The provisional credential must be made available to the individual for the lesser of three years or the period of time required by the individual to complete the requirements for a special education strategist credential.

SECTION 5. MENTAL RETARDATION CREDENTIAL. In addition to any other credential, the superintendent of public instruction may implement a mental retardation credential effective August 1, 2001. Any individual who obtains a mental retardation credential and meets all other teacher licensure requirements imposed by statute may provide special education services in the area of mental retardation.

SECTION 6. EXPIRATION DATE. Section 5 of this Act is effective through June 30, 2003, and after that date is ineffective.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 187

HOUSE BILL NO. 1437

(Representatives Dosch, Carlisle, Grande, Meier)
(Senator Stenehjem)

RELIGIOUS SPEECH IN SCHOOLS

AN ACT to create and enact a new section to chapter 15.1-19 of the North Dakota Century Code, relating to religious and secular speech in schools; and to repeal section 15.1-19-03 of the North Dakota Century Code, relating to periods of silence during a schoolday.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

Recitation of prayer - Period of silence - Pledge of allegiance.

1. A student may voluntarily pray aloud or participate in religious speech at any time before, during, or after the school day to the same extent a student may voluntarily speak or participate in secular speech.
2. A school board, school administrator, or teacher may not impose any restriction on the time, place, manner, or location of any student-initiated religious speech or prayer which exceeds the restriction imposed on students' secular speech.
3. A school board may, by resolution, allow a classroom teacher to impose up to one minute of silence for meditation, reflection, or prayer at the beginning of each school day.
4. A school board may authorize the voluntary recitation of the pledge of allegiance by a teacher or one or more students at the beginning of each school day. A student may not be required to recite the pledge of allegiance, stand during the recitation of the pledge of allegiance, or salute the American flag.

SECTION 2. REPEAL. Section 15.1-19-03 of the North Dakota Century Code is repealed.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 188

HOUSE BILL NO. 1267

(Representatives Carlisle, R. Kelsch, Mahoney, Weiler)
(Senators Freborg, Klein)

SCHOOL LAW ENFORCEMENT RECORDS

AN ACT to create and enact two new sections to chapter 15.1-19 of the North Dakota Century Code, relating to records of a school law enforcement unit and retention of records; and to amend and reenact sections 27-20-51 and 27-20-52 of the North Dakota Century Code, relating to court and law enforcement records of a juvenile.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

School law enforcement unit.

1. A school may create or designate a school law enforcement unit as defined in the Family Educational Rights and Privacy Act [20 U.S.C. 1232(g)] and rules adopted under the Act. Records of a school law enforcement unit regarding a student at a school are confidential but may be released to:
 - a. A juvenile court having the student before it in any proceeding;
 - b. Counsel for a party to the proceeding;
 - c. Officers of public entities to whom the student is committed;
 - d. Officers of a state or local law enforcement agency for use in the discharge of their official duties;
 - e. A superintendent or principal of another school in which the student wishes to enroll; and
 - f. The student's parent, legal guardian, or legal custodian.
2. Nothing in this section restricts the release of general information that does not identify the student.
3. This section does not apply to education records that are confidential under federal law.

SECTION 2. A new section to chapter 15.1-19 of the North Dakota Century Code is created and enacted as follows:

Record retention. Records regarding a student obtained by a school under section 1 of this Act, section 27-20-51, or section 27-20-52 must be destroyed when the student reaches the age of eighteen or no longer attends the school, whichever occurs later.

SECTION 3. AMENDMENT. Section 27-20-51 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-51. Inspection of court files and records.

1. Except as provided in 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.
2. Juvenile court files and records are also open to inspection with written leave of a juvenile court judge or judicial referee to whom juvenile court matters have been referred:
 - a. Upon a showing in writing of a legitimate interest in a proceeding or in the work of the juvenile court, but only to the extent necessary to respond to the legitimate interest; and
 - b. By the principal of any public or private school that is a member of the North Dakota high school activities association, or the superintendent of any school district that has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota high school activities association.

3. In a proceeding under this chapter, if the juvenile court finds that a child committed a delinquent or unruly act that constitutes a violation of a law or local ordinance governing the operation of a motor vehicle or a delinquent act of manslaughter or negligent homicide caused by the child's operation of a motor vehicle, the juvenile court shall report the finding to the director of the department of transportation within ten days.
4. Following an adjudication of delinquency for an offense that would be a felony if committed by an adult, the juvenile's school principal, chief administrative officer, or designated school guidance counselor, if requested, must be allowed access to the disposition order. Any other juvenile court files and records of a child may be disclosed to a superintendent or principal of the school in which the child is currently enrolled or in which the child wishes to enroll if the child appears to present a danger to self or to the students or staff of the school.
5. Following an adjudication of delinquency for an offense that results in the prohibitions included in subsection 1 or 2 of section 62.1-02-01, if requested, a law enforcement officer must be allowed access to the disposition order.
6. The juvenile court may notify a referring agency of the disposition of a case.
7. Notwithstanding that juvenile court records are closed to the public, nothing in this section may be construed to limit the release upon request of general information not identifying the identity of any juvenile, witness, or victim in any proceeding under this chapter. Files in the clerk of court's office are open to public inspection if the related hearing was open to the public under section 27-20-24.

SECTION 4. AMENDMENT. Section 27-20-52 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-52. Law enforcement records. Law enforcement 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 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 facilities to which the child

is 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; ~~and~~

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 April 18, 2001
Filed April 18, 2001

CHAPTER 189

HOUSE BILL NO. 1371

(Representative Disrud)

STUDENT COMPULSORY ATTENDANCE

AN ACT to amend and reenact section 15-34.1-01 of the North Dakota Century Code or in the alternative to amend and reenact section 15.1-20-01 of the North Dakota Century Code, relating to the compulsory attendance of students.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-34.1-01 of the North Dakota Century Code is amended and reenacted as follows:

15-34.1-01. Compulsory attendance. ~~Every parent, guardian, or other~~

1. ~~Any person who resides within any school district, or who resides upon any government base or installation without any school district, and has control over any educable having responsibility for a child of an age of seven years to between the ages of seven and sixteen years who does not fall under the provisions of section 15-34.1-02 or 15-34.1-03, shall send or take such~~ shall ensure that the child ~~to~~ is in attendance at a public school for the duration of each school year during the entire time such school is in session.
2. If a person enrolls a child of age six in a public school, the person shall ensure that the child is in attendance at the public school for the duration of each school year. The person may withdraw a child of age six from the public school. However, once the child is withdrawn, the person may not reenroll the child until the following school year. This subsection does not apply if the reason for the withdrawal is the child's relocation to another school district.

⁹⁵ **SECTION 2. AMENDMENT.** Section 15.1-20-01 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

15.1-20-01. Compulsory attendance.

1. Any person having responsibility for a child between the ages of seven and sixteen years shall ensure that the child is in attendance at a public school for the duration of each school year.
2. If a person enrolls a child of age six in a public school, the person shall ensure that the child is in attendance at the public school for the

⁹⁵ Section 15.1-20-01 was created by section 7 of House Bill No. 1045, chapter 181.

duration of each school year. The person may withdraw a child of age six from the public school. However, once the child is withdrawn, the person may not reenroll the child until the following school year. This subsection does not apply if the reason for the withdrawal is the child's relocation to another school district.

3. This section does not apply if a child is exempted under the provisions of section 15.1-20-02.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 190

HOUSE BILL NO. 1293

(Representatives Berg, Haas, R. Kelsch, L. Thoreson)
(Senators Freborg, G. Nelson)

READING AND MATHEMATICS TESTING

AN ACT to create and enact seven new sections to chapter 15-47 of the North Dakota Century Code or in the alternative to create and enact seven new sections to chapter 15.1-21 of the North Dakota Century Code, relating to the testing of reading and mathematics.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. If House Bill No. 1045 does not become effective, a new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Reading and mathematics - Administration of test. Beginning during the second half of the 2001-02 school year and annually thereafter, the superintendent of public instruction shall administer to students a test that is aligned to the state content standards in reading and mathematics. This test must be administered to 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.

SECTION 2. If House Bill No. 1045 does not become effective, a new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Test scores - Compilation. The superintendent of public instruction shall arrange for the compilation of test scores in a manner that indicates achievement and allows a comparison of individual students, classrooms within a given school and school district, schools within the state, and school districts within the state. The test scores must also allow for comparisons based on students' gender, ethnicity, economic status, service status, and assessment status, unless doing so enables the identification of any student.

SECTION 3. If House Bill No. 1045 does not become effective, a new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

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, and the significance of the test scores.

SECTION 4. If House Bill No. 1045 does not become effective, a new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Superintendent of public instruction - Review of test questions. The superintendent of public instruction shall require that the entity developing a test to be administered under section 1 of this Act not include questions that might be deemed personal to a student or to the student's family and that the entity developing the test not include questions requiring responses that might be deemed personal to a student or to the student's family. Before a test is finalized for use in this state, the superintendent shall require that the test be reviewed by a standards alignment committee appointed by the superintendent to ensure that the test meets the requirements of this section.

SECTION 5. If House Bill No. 1045 does not become effective, a new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Professional development - Use of available funds.

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;
 - c. The number of district teachers who participated in professional development activities during the preceding school year;
 - d. The source of funding for the professional development activities in which the teachers participated during the preceding school year; and
 - e. The nature and scope of the professional development activities in which the teachers participated.
2. The superintendent of public instruction shall compile the information submitted under this section to determine how much of the available funding for professional development was used by school districts in this state and, beginning with the reports due on or before October 1, 2002, whether the expenditure correlated with increased student achievement on the reading and mathematics tests required by section 1 of this Act.

SECTION 6. If House Bill No. 1045 does not become effective, a new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Content standards - Translation - Curriculum. Each district shall provide upon request a copy of its content standards in the areas of reading and mathematics, a translation of the district's content standards in the areas of reading and mathematics for individuals who do not have a background in elementary or high school education, and a copy of the curriculum or syllabus used by each teacher of reading and mathematics.

SECTION 7. If House Bill No. 1045 does not become effective, a new section to chapter 15-47 of the North Dakota Century Code is created and enacted as follows:

Test - Availability for viewing. Upon request, a school district must allow any individual over the age of twenty to view any test administered under this Act as soon as the test is in the possession of the school district.

SECTION 8. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Reading and mathematics - Administration of test. Beginning during the second half of the 2001-02 school year and annually thereafter, the superintendent of public instruction shall administer to public school students a test that is aligned to the state content standards in reading and mathematics. This test must be administered to 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.

SECTION 9. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Test scores - Compilation. The superintendent of public instruction shall arrange for the compilation of test scores in a manner that indicates achievement and allows a comparison of individual students, classrooms within a given school and school district, schools within the state, and school districts within the state. The test scores must also allow for comparisons based on students' gender, ethnicity, economic status, service status, and assessment status, unless doing so enables the identification of any student.

SECTION 10. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

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, and the significance of the test scores.

SECTION 11. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Superintendent of public instruction - Review of test questions. The superintendent of public instruction shall require that the entity developing a test to be administered under section 8 of this Act not include questions that might be deemed personal to a student or to the student's family and that the entity developing the test not include questions requiring responses that might be deemed personal to a student or to the student's family. Before a test is finalized for use in this state, the superintendent shall require that the test be reviewed by a standards alignment committee appointed by the superintendent to ensure that the test meets the requirements of this section.

SECTION 12. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Professional development - Use of available funds.

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;
 - c. The number of district teachers who participated in professional development activities during the preceding school year;
 - d. The source of funding for the professional development activities in which the teachers participated during the preceding school year; and
 - e. The nature and scope of the professional development activities in which the teachers participated.
2. The superintendent of public instruction shall compile the information submitted under this section to determine how much of the available funding for professional development was used by school districts in this state and, beginning with the reports due on or before October 1, 2002, whether the expenditure correlated with increased student achievement on the reading and mathematics tests required by section 8 of this Act.

SECTION 13. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Content standards - Translation - Curriculum. Each district shall provide upon request a copy of its content standards in the areas of reading and mathematics, a translation of the district's content standards in the areas of reading and mathematics for individuals who do not have a background in elementary or high school education, and a copy of the curriculum or syllabus used by each teacher of reading and mathematics.

SECTION 14. A new section to chapter 15.1-21 of the North Dakota Century Code is created and enacted as follows:

Test - Availability for viewing. Upon request, a school district must allow any individual over the age of twenty to view any test administered under this Act as soon as the test is in the possession of the school district.

Approved May 4, 2001
Filed May 8, 2001

CHAPTER 191

SENATE BILL NO. 2430

(Senators O'Connell, Holmberg, Wanzek)
(Representatives Hanson, D. Johnson, Mueller)

STATE SCHOOL AID DISTRIBUTION

AN ACT to amend and reenact section 15-40.1-05 of the North Dakota Century Code or in the alternative to amend and reenact section 15.1-27-01 of the North Dakota Century Code, relating to the distribution of state aid to school districts; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-40.1-05 of the North Dakota Century Code is amended and reenacted as follows:

15-40.1-05. Distribution of payments to school districts - Duty of superintendent of public instruction. The superintendent of public instruction shall determine the total payments made to each ~~respective~~ school district during the previous fiscal year. The superintendent shall pay each school district ten percent of that amount, within the limits of legislative appropriation, on or before ~~July fifteenth, August first, and September first, and October first~~ of each year. The superintendent shall pay each school district twenty percent of that amount, within the limits of legislative appropriation, on or before October first of each year. The superintendent of public instruction shall determine what amounts in addition to those payments are necessary to constitute the remainder of the payments due to each school district for the current school year. On or before November first, the superintendent of public instruction shall pay to each school district, within limits of legislative appropriation, the amounts needed in addition to the above payments to constitute ~~fifty~~ sixty percent of the sum found to be due under this chapter. On or before the first day of December, January, February, March, and April, payments equal to one-fifth of the total remaining payments must be made to each respective school district. If funds appropriated for distribution to school districts for per student and transportation aid become available after April first, the superintendent shall distribute the payments no later than June thirtieth.

⁹⁶ **SECTION 2. AMENDMENT.** Section 15.1-27-01 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

15.1-27-01. Payments to school districts - Distribution.

1. The superintendent of public instruction shall determine the total state payments made to each school district during the previous fiscal year.

⁹⁶ Section 15.1-27-01 was created by section 11 of House Bill No. 1045, chapter 181.

2. The superintendent of public instruction shall pay each district ten percent of the amount determined under subsection 1, within the limits of legislative appropriation, on or before ~~July fifteenth~~, August first, and September first, and October first of each year. The superintendent shall pay each school district twenty percent of that amount, within the limits of legislative appropriation, on or before October first of each year.
3. The superintendent of public instruction shall determine the amount that, in addition to the payments already made, is necessary to constitute the remainder of the amount due each district for the current school year.
4. On or before November first, the superintendent of public instruction shall pay to each district, within the limits of legislative appropriation, an amount that, in addition to the above payments, constitutes ~~fifty~~ sixty percent of the sum due under this chapter.
5. On or before the first day of December, January, February, March, and April, payments equal to twenty percent of the total remaining payments must be made to each district.
6. If funds appropriated for distribution to districts as per student and transportation aid become available after April first, the superintendent of public instruction shall distribute the newly available payments on or before June thirtieth.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 2001.

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

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 192

HOUSE BILL NO. 1321

(Representatives Disrud, Hawken, Wentz)
(Senators Holmberg, Lee, Wanzek)

LIMITED ENGLISH PROFICIENT STUDENT PAYMENTS

AN ACT to amend and reenact section 15-40.1-07.7 of the North Dakota Century Code or in the alternative to amend and reenact section 15.1-27-12 of the North Dakota Century Code, relating to the payments for limited English proficient students.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-40.1-07.7 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.1-07.7. Per student payments - Limited English proficient students.

1. In addition to any other payments provided for by this chapter, each school district is entitled to receive ~~four~~:
 - 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~~ found to have negligible or very limited English language skills, as evidenced by a classification of level I or II using the Woodcock-Munoz language survey.
 - c. Two hundred twenty-five dollars for each student who has been assessed by the student's school district and found to have limited English language skills, as evidenced by a classification of level III using the Woodcock-Munoz language survey.
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; and

- d. Must have difficulty speaking, reading, writing, and understanding English.
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 English language skills, very limited English language skills, or limited English language skills. In order to receive the full payment provided for in this section, a school district must complete the student assessment required by subsection 1 and forward the results to the superintendent of public instruction on or before ~~October twenty-fifth~~ December first of each school year. 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 ~~October first~~ the start of the school year or departing the school district prior to the completion of the school year.

⁹⁷ **SECTION 2. AMENDMENT.** Section 15.1-27-12 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

15.1-27-12. Per student payments - Limited English proficient students.

1. In addition to any other payments provided for by this chapter, each school district is entitled to receive ~~four~~:
- 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 ~~negligible or~~ very limited English language skills, as evidenced by a classification of level ~~I or~~ II using the Woodcock-Munoz language survey; and
- c. 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.
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;

⁹⁷ Section 15.1-27-12 was created by section 11 of House Bill No. 1045, chapter 181.

- c. Must have a primary language other than English; and
 - d. Must have difficulty speaking, reading, writing, and understanding English.
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 English language skills, very limited English language skills, or limited English language skills. In order to receive the full payment provided for in this section, a school district must complete the student assessment required by subsection 1 and forward the results to the superintendent of public instruction on or before ~~October twenty-fifth~~ December first of each school year. 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 ~~October first~~ the start of the school year or departing from the school district prior to the completion of the school year.

Approved May 4, 2001
Filed May 8, 2001

CHAPTER 193

SENATE BILL NO. 2147

(Education Committee)

(At the request of the Superintendent of Public Instruction)

SCHOOL TUITION PAYMENT APPEALS

AN ACT to amend and reenact sections 15-40.2-05 and 15-40.2-09 of the North Dakota Century Code or in the alternative to amend and reenact section 15.1-29-01 and subsection 1 of section 15.1-29-06 of the North Dakota Century Code, relating to school district tuition payment appeals to the state board of public school education; and to repeal section 15.1-29-08 of the North Dakota Century Code, relating to appealing a school board's decision to not pay tuition for a kindergarten student.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-40.2-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.2-05. Application of parent or guardian for payment of tuition by district. The parent or guardian of any student who is a resident of a district may apply in writing to the school board of the student's school district of residence for approval of the payment of tuition charges to another school district for attendance of the student in another school district. The school board shall, within sixty days of its receipt of the application, meet with the student's parent or guardian and render a decision in regard to the payment of tuition charges. If the school board has not rendered a decision within sixty days of receipt of the application, the application is deemed approved. If the school board of the district of residence approves the application, it shall pay the tuition charges. If the application is disapproved, the student's parent or guardian may file an appeal with the county superintendent of schools. A three-member committee consisting of a member appointed by the board of county commissioners for a term of three years or appointed to fill the unexpired portion of a term at the time a vacancy occurs, the state's attorney, and the county superintendent of schools shall within fifteen days consult with the school boards of the districts concerned and with the student's parent or guardian, hold a hearing after giving advance notice to the parties directly involved, and render a decision in regard to the payment of tuition charges. The hearing must be conducted in a manner that allows the arguments and responses of all parties to be presented. In making its decision, the committee shall determine whether the student is a high school student, which, for purposes of this section, must be defined to mean grades nine through twelve, whether the student is an elementary school student, which, for purposes of this section, must be defined to mean grades one through eight, or whether the student is a kindergarten student, which, for purposes of this section, must be defined as a program established pursuant to chapter 15-45, and then proceed in accordance with the following:

1. High school. If the student is a high school student and the committee finds that the attendance of the student is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the educational needs of the student, or extreme family or student hardship, the committee may approve the application.

Upon approval, the committee shall approve the payment of tuition by the student's district of residence, obligating the district of residence to pay the same. The committee's approval for the payment of tuition may be for any fixed number of school terms, up to the completion of the student's high school education. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final.

2. Elementary or kindergarten. If the student is an elementary or kindergarten student and the committee finds that the attendance of the student is necessitated by shorter distances or extreme family or student hardship, the committee may approve the application. Upon approval, the committee shall approve the payment of tuition by the student's district of residence, and obligate the district of residence to pay the same. The committee's approval for the payment of tuition is limited to one school term, and subsequent applications for the payment of tuition may be made annually. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final.
- ~~3. Kindergarten. If the student is a kindergarten student, the school board of the student's district of residence may pay tuition to the receiving district. The committee may not hear an appeal from the parents or guardian as provided for in this section if the school board of the district of residence decides not to pay tuition to the admitting district. If the school board of the district of residence does not pay the tuition to the admitting district, the student's parent or guardian may pay the tuition to the admitting district under the provisions of section 15-40.2-02.~~

If twenty-five percent or more of the taxable valuation of the school district of residence lies in another county, the joint committee must consist of a member appointed by the board of county commissioners for a term of three years or appointed to fill the unexpired portion of a term at the time a vacancy occurs, the state's attorney, and the county superintendent of schools from the county in which the school district headquarters is located, and any counties in which twenty-five percent or more of the taxable valuation is located. The concurrence of a majority of the quorum of the joint committee is necessary to render a decision regarding the payment of tuition. If the student's district of residence does not comply with the decision requiring that tuition charges be paid, the admitting district shall notify the county superintendent of schools of the county of the student's residence and the state superintendent of public instruction. Upon verification by the county superintendent of schools that tuition payments are due the admitting district and are unpaid, all payments from the state for foundation aid to the student's district of residence must be withheld until the tuition due has been fully paid.

A school district of residence may provide transportation to a student for whom tuition is being 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 2. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-40.2-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.2-09. Attendance in public schools or institutions of bordering states, when permitted - Continuation of attendance under certain circumstances.

1. Students may attend a school in a bordering state in accordance with section 15-40.2-10 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 or institution 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 attends in the bordering state.
2. If the school board of the district in which the student resides denies a request for attendance and payment of tuition in another state, an appeal may be made to the three-member committee in accordance with section 15-40.2-05. If the three-member committee determines that the student falls within the terms of subdivision b or c of subsection 1, then the student may attend in the bordering state and the school district of residence shall pay the tuition. 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 15-40.2-05. ~~For kindergarten students, the three-member committee shall use the criteria specified for elementary students in section 15-40.2-05. Subsection 3 of section 15-40.2-05 does not apply to an appeal for out-of-state attendance and payment of tuition.~~ Regardless of the provisions of this section, if the school district of residence does not provide for the education of kindergarten students, it may not pay tuition for a kindergarten student to attend school in a bordering state. The decision of the committee regarding payment of tuition for high school, elementary, or kindergarten students may be appealed by the school board, or the parent or guardian of the student, to the state board of public school education, whose decision is final.
3. Foundation aid payments for students attending out-of-state schools must be made to the district of residence. However, the district of the student's residence is entitled to reduce the tuition payment 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. Transportation payments for students attending school in a bordering state must be determined as provided in section 15-40.1-16.
4. This section does not require the district of residence to provide student transportation, or payments in lieu thereof, for students attending out-of-state schools.

⁹⁸ **SECTION 3. AMENDMENT.** Section 15.1-29-01 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, 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. ~~If the student is a kindergarten student, the three-member committee shall apply the same criteria as that specified for elementary students in section 15.1-29-06, except that subsection 2 of section 15.1-29-06 does not apply to an appeal for out-of-state attendance and payment of tuition.~~ 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

⁹⁸ Section 15.1-29-01 was created by section 13 of House Bill No. 1045, chapter 181.

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 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.

⁹⁹ **SECTION 4. AMENDMENT.** Subsection 1 of section 15.1-29-06 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

1.
 - a. Within fifteen days after receipt of an appeal filed under section 15.1-29-05, the county superintendent of schools shall convene a three-member committee consisting of the county superintendent, the state's attorney, and one member appointed by the board of county commissioners for a term of three years. The committee shall consult with the boards of the affected districts and with the student's parent. The committee shall schedule a hearing, giving due notice to each affected board and to the student's parent. The committee shall conduct the hearing in a manner that allows all parties to present arguments and responses. The committee shall base its decision regarding the payment of tuition on the grade in which the student is enrolled.
 - b. If the student is or during the following school year will be enrolled in any grade from nine through twelve and the committee finds that the attendance of the student is necessitated by shorter distances, previous attendance in another high school, inadequacy of curriculum considering the student's educational needs, or extreme hardship for the student or the student's family, the committee shall approve the application and the payment of tuition by the student's school district of residence, thereby obligating the district of residence to pay the tuition. The committee's directive regarding the payment of tuition may be for any fixed number of school years, up to the completion of the student's high school education, unless

⁹⁹ Section 15.1-29-06 was created by section 13 of House Bill No. 1045, chapter 181.

open enrollment is an available option. The decision of the committee may be appealed to the state board of public school education. A decision by the state board is final.

- c. If the student is or during the following school year will be enrolled in any grade from ~~one~~ kindergarten through eight and the committee finds that the attendance of the student is necessitated by shorter distances or extreme hardship for the student or the student's family, the committee shall approve the application and the payment of tuition by the student's district of residence, thereby obligating the district of residence to pay the tuition. The committee's directive regarding the payment of tuition is limited to one school year. The student's parent may make subsequent applications for the payment of tuition. The decision of the committee may be appealed to the state board of public school education and the decision of the board is final and is not subject to appeal.

¹⁰⁰ **SECTION 5. REPEAL.** Section 15.1-29-08 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is repealed.

Approved March 14, 2001
Filed March 14, 2001

¹⁰⁰ Section 15.1-29-08 was created by section 13 of House Bill No. 1045, chapter 181.

CHAPTER 194

HOUSE BILL NO. 1346

(Representatives Skarphol, Aarsvold, Koppang)
(Senators Lindaas, Lyson, Wardner)

OUT-OF-STATE TUITION AGREEMENTS

AN ACT to amend and reenact section 15-40.2-10 of the North Dakota Century Code or in the alternative to amend and reenact section 15.1-29-02 of the North Dakota Century Code, relating to tuition agreements for students attending school in bordering states.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-40.2-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.2-10. Reciprocal master agreements for student Student attendance in other states - School district agreements - Procedure when bordering state does not enter into reciprocal master agreement - Contract - Tuition.

1. The superintendent of public instruction shall enter into reciprocal master agreements with the appropriate state educational agencies or officers of bordering states in regard to the cost of educating elementary and high school students in the public schools or institutions in such bordering states. A school district may either comply with the terms of the reciprocal master agreement or, upon notification to the superintendent of public instruction, may enter into an agreement contract with a school district in a bordering state for the education of elementary and high school students. The agreement, which replaces the provisions of the master reciprocal agreement, must provide for the payment of tuition at an amount agreed upon by the school district of residence and the school district of the bordering state. However, the tuition may not exceed the amount established under the reciprocal master agreement, nor may it be less than the per student foundation aid plus tuition apportionment in the student's school district of residence. For purposes of foundation state aid distribution, a student attending who attends school in a bordering state under such an agreement a contract as provided by this section is deemed to be in attendance in the student's school district of residence. The student's school district of residence is liable to the school district in the bordering state for payments as provided in the agreement contract.
2. If the state educational agency or officer of the bordering state is not authorized to or declines to enter into a reciprocal master agreement with the superintendent of public instruction, a school district may negotiate with a school district of that bordering state an amount of tuition it is willing to pay to that other state's school district for the education of pupils in that state. The school district of residence is liable to the school district in the bordering state for the payments it agrees to make under this subsection. However, if the school district accepts

students from ~~that~~ a bordering state, it may not agree to accept ~~these nonresident~~ the students for an amount of tuition that is less than the foundation aid amount of the per student payment plus the tuition apportionment it would have received from this state for one of its students in the same grade if its student had been attending in that bordering state.

¹⁰¹ **SECTION 2. AMENDMENT.** Section 15.1-29-02 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

15.1-29-02. Education of students in bordering states - Reciprocal ~~contract~~ Contract - Tuition.

1. ~~The superintendent of public instruction shall pursue a reciprocal contract with the education agency of each bordering state. The contract must address the cost of educating students in the public schools of the bordering state.~~
2. ~~A school district may comply with the terms of the superintendent's reciprocal contract or, upon providing notice to the superintendent of public instruction, may contract with a school district in a bordering state for the education of students. A contract between school districts supersedes the terms of the superintendent's reciprocal contract. A contract between school districts must provide for the payment of tuition at an agreed-upon amount. The amount of tuition payable per student may not exceed the amount set by the superintendent's reciprocal contract nor may it be less than the per student payment plus tuition apportionment in the North Dakota school district.~~
3. 2. For purposes of per student payments and tuition apportionment payments, a student who attends school in a bordering state under a contract provided for by this section is deemed to be in attendance in the student's school district of residence. The student's school district of residence is liable to the school district of the bordering state for payments as provided in the contract.
4. 3. If the education agency of a bordering state is not authorized to or refuses to enter into a reciprocal contract with the superintendent of public instruction, a school district in this state may enter into its own contract with a school district in a bordering state for the education of students. A school district in this state may not agree to accept students from a bordering state unless the tuition payable equals or exceeds the per student payment plus the tuition apportionment payment that the district would have received from this state for a student in the same grade if its student had been attending school in the bordering state.

Approved March 13, 2001
Filed March 13, 2001

¹⁰¹ Section 15.1-29-02 was created by section 13 of House Bill No. 1045, chapter 181.

CHAPTER 195

SENATE BILL NO. 2106

(Education Committee)

(At the request of the Superintendent of Public Instruction)

OPEN ENROLLMENT

AN ACT to amend and reenact sections 15-40.3-01, 15-40.3-06, and 15-40.3-07 of the North Dakota Century Code or in the alternative to amend and reenact sections 15.1-31-01, 15.1-31-06, and 15.1-31-07 of the North Dakota Century Code, relating to open enrollment between school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-40.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.3-01. Open enrollment - Procedure. A student's parent or legal guardian who wishes to enroll the student in a North Dakota school district other than the student's district of residence shall, not later than February first of the school year preceding the year of enrollment, apply to the school board of the student's district of residence, on forms provided by the superintendent of public instruction, for approval to enroll the student in a district other than the student's district of residence. By March first of the school year preceding the year of enrollment, the school board of the district of residence shall act on the application, notify the parent or legal guardian of the board's decision within five days, and if the application is approved, immediately transmit the application to the admitting district. By April first, the board of the admitting district shall approve or disapprove the application. The board of the admitting district shall notify the board of the district of residence and the student's parent or legal guardian within five days regarding its decision. Notice of intent to enroll in the admitting district obligates the student to attend the admitting district during the following school year, unless the school boards of the resident and the admitting districts agree in writing to allow the student to transfer back to the resident district, or the student's parents or guardians change residence to another district. All applications must be reviewed in the order that they are received. A student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment. For purposes of determining whether the grade level in which a student requires enrollment is offered, the several 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. A child placed at a group or residential care facility or a residential treatment center in accordance with section 15-40.2-08 is not eligible for open enrollment under this section. The school board of a school district of residence and of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent or legal guardian, moves from the student's school district of residence to another school district and who wishes to enroll in a school district, other than the district to which the student moved. The school board of a school district of residence and of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent or legal guardian, moves into this state from out of state and who wishes to enroll in a school district other than the district to which the student moved.

SECTION 2. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-40.3-06 of the North Dakota Century Code is amended and reenacted as follows:

15-40.3-06. Local school boards - Standards.

1. Each school board shall adopt standards for the acceptance and rejection of applications for open enrollment as provided in section 15-40.3-01. The standards may include the capacity of a program, class, grade level, or school building. The standards may not include previous academic achievement, participation in extracurricular activities, disabilities, English language proficiency, or previous disciplinary proceedings.
2. The school board of the admitting district may determine that the district may not accept applications for open enrollment under this chapter.
3. a. A school district participating in an open enrollment program may not give or offer to give a student remuneration, or directly or indirectly exert influence upon the student or the student's family, in order to encourage participation in the open enrollment program for the purpose of having the student participate in varsity athletic activities. However, any student who participated in varsity athletic activities during the 1992-93 school year, at a school in a district other than the student's district of residence or at a school outside the boundary within which the student would normally attend school may continue to participate in varsity athletics at that school for the duration of the student's high school career.

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 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 3. AMENDMENT. If House Bill No. 1045 does not become effective, section 15-40.3-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-40.3-07. Students not subject to this chapter. A student, who, as the result of dissolution or reorganization, resides in a district other than the one the student chooses to attend at the time of the dissolution or reorganization, is not subject to the provisions of this chapter and may attend school in the chosen school district if that district participates in open enrollment. The student may not be

considered a student in average daily membership in the student's school district of residence for purposes of section 15-40.3-02.

¹⁰² **SECTION 4. AMENDMENT.** Section 15.1-31-01 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

15.1-31-01. Open enrollment - Procedure.

1. By February first of the school year preceding the year of enrollment, a parent who wishes to enroll a student in a North Dakota school district other than the student's district of residence shall file an application for approval with the board of the student's district of residence. The superintendent of public instruction shall make the application forms available in each school district.
2. By March first of the school year preceding the year of enrollment, the school board of the student's district of residence shall act on the application, notify the parent of the board's decision within five days, and if the application is approved, immediately transmit the application to the admitting district.
3. By April first of the school year preceding the year of enrollment, the board of the admitting district shall approve or deny the application. The board of the admitting district shall notify the board of the district of residence and the student's parent of its decision within five days.
4. Notice of intent to enroll in the admitting district obligates the student to attend the admitting district during the following school year unless the school boards of the resident and the admitting districts agree in writing to allow the student to transfer back to the resident district or the student's parent relocates to another district.
5. All applications must be reviewed in the order they are received.
6. A student whose school district of residence does not offer the grade level in which the student requires enrollment may not participate in open enrollment. For purposes of determining whether the grade level in which the student requires enrollment is offered, the several school districts cooperating with each other for the joint provision of education services under a plan approved by the superintendent of public instruction must be considered to be a single district.
7. A child placed for purposes other than education in a group or residential care facility or in a residential treatment center is not eligible for open enrollment under this section.
8. The board of a school district of residence and the board of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent,

¹⁰² Section 15.1-31-01 was created by section 15 of House Bill No. 1045, chapter 181.

moves from the student's school district of residence to another school district and who wishes to enroll in a school district other than the district to which the student moved.

9. The board of a school district of residence and the board of an admitting district shall waive the application, consideration, and approval dates in this section for any student who, together with the student's parent, moves into this state from out of state and who wishes to enroll in a school district other than the district to which the student moved.

¹⁰³ **SECTION 5. AMENDMENT.** Section 15.1-31-06 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, 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 ~~or indirectly~~ exert influence on the student or the student's family, in order to encourage participation in the open enrollment program ~~for the purpose of having the student participate in varsity athletic activities.~~
 - 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 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

¹⁰³ Section 15.1-31-06 was created by section 15 of House Bill No. 1045, chapter 181.

appealable to the state board of public school education. A decision by the state board of public school education is final.

¹⁰⁴ **SECTION 6. AMENDMENT.** Section 15.1-31-07 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, 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. 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.

Approved April 23, 2001
Filed April 23, 2001

¹⁰⁴ Section 15.1-31-07 was created by section 15 of House Bill No. 1045, chapter 181.

CHAPTER 196

HOUSE BILL NO. 1142

(Education Committee)

(At the request of the Department of Public Instruction)

STUDENT WITH DISABILITIES DEFINITION

AN ACT to amend and reenact subsection 2 of section 15-59-01 of the North Dakota Century Code or in the alternative to amend and reenact subsection 4 of section 15.1-32-01 of the North Dakota Century Code, relating to the definition of a child or student with disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1045 does not become effective, subsection 2 of section 15-59-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Child with disabilities" means a child an individual who has reached the third birthday, and is at least three years of age but who has not reached the age of twenty-one years by midnight before September first of August thirty-first, 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 aids and services designed to meet individual education the individual's educational needs. This The term includes children who are mentally retarded, hard of hearing, deaf, deaf-blind, speech or language impaired, visually impaired, seriously emotionally disturbed, specific learning disabled, orthopedically impaired, otherwise health impaired, autistic, or an individual with mental retardation, hearing impairment, deafness, deafness-blindness, a speech or language impairment, a visual impairment, emotional disturbance, and orthopedic impairment, or autism, and an individual who has a specific learning disability, a traumatic brain injured 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 correction facility unless, in the individual's last educational placement prior to incarceration, the individual was identified as being a child with a disability and had an individualized education program or services plan.

¹⁰⁵ **SECTION 2. AMENDMENT.** Subsection 4 of section 15.1-32-01 of the North Dakota Century Code as created by House Bill No. 1045, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

¹⁰⁵ Section 15.1-32-01 was created by section 16 of House Bill No. 1045, chapter 181.

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 ~~who is mentally retarded, hearing impaired, deaf, deaf-blind, speech or language impaired, visually impaired, emotionally disturbed, orthopedically impaired, or autistic 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 correction 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.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 197

HOUSE BILL NO. 1301

(Representatives Nottestad, Aarsvold, Haas, L. Thoreson)
(Senator Wardner)

SCHOOL CONTINGENT PAYMENTS

AN ACT to amend and reenact subsection 2 of section 14 of chapter 169 of the 1999 Session Laws, relating to contingent payments; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 14 of chapter 169 of the 1999 Session Laws is amended and reenacted as follows:

2. a. If any funds appropriated by the legislative assembly to the grants - foundation aid and transportation line item remain after completion of all statutory obligations, to the extent of legislative appropriations, the superintendent of public instruction shall distribute the first \$1,000,000 of such contingent funds as supplemental per student payments to each school district in the state on the basis of average daily membership.
- b. The superintendent shall distribute the next \$1,000,000 of such contingent funds to assist school districts experiencing declines in student enrollment under the terms provided for by subdivision b of subsection 1.
- c. ~~The superintendent shall distribute the next \$2,000,000 of such contingent funds to school districts eligible to receive reorganization bonuses, as provided for by Senate Bill No. 2441, as approved by the fifty-sixth legislative assembly, and shall distribute any remaining funds as supplemental per student payments to each school district in the state on the basis of average daily membership.~~

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,665,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of distributing reorganization bonuses under section 15.1-12-11.1 to school districts, for the biennium beginning July 1, 2001, and ending June 30, 2003. The superintendent of public instruction shall determine the eligibility of reorganized districts chronologically, according to the date on which each district's reorganization plan was approved by the state board of public school education. No reorganization bonus payable under this Act may exceed \$500,000. A reorganized district that receives a reorganization bonus under this Act is not eligible to receive additional reorganization bonuses based on future reorganization efforts for a period of ten years.

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

Approved May 4, 2001

Filed May 4, 2001

CHAPTER 198**SENATE BILL NO. 2324**

(Senators Kelsh, Freborg)
(Representatives Nelson, Weisz)

FUNDING OF CORE CURRICULUM STUDY

AN ACT to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - FUNDING OF CORE CURRICULUM. The legislative council shall consider studying the delivery of a core curriculum to each elementary and high school student in this state and the feasibility and desirability of providing total state funding solely for the delivery of a core curriculum. The legislative council shall report its findings and recommendations, together with any legislation required to implement its recommendations, to the fifty-eighth legislative assembly.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 199

SENATE BILL NO. 2201

(Senator Traynor)
(Representatives Brekke, Nicholas)

DEVILS LAKE SCHOOL LAND TRANSFER

AN ACT to provide for the removal of a future interest and a covenant from deeds transferring land from this state to the Devils Lake public school district No. 1.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. The state of North Dakota shall transfer in the name of the state of North Dakota by written document, executed by the governor and attested by the secretary of state, any interest, right, or title retained in the land transferred under chapter 647 of the 1989 Session Laws to Devils Lake public school district No. 1, including the interest, right, or title that provides if the land ceases to be used for school purposes, then the land shall revert to the state of North Dakota upon payment to the school district of the same price for which it was purchased. In addition, the state shall remove and release any person who may have any interest, right, or title to the property from the following covenant, agreement, servitude, or easement concerning the same property, which provides for the covenant and agreement that the students enrolled at the school for the deaf of North Dakota are guaranteed use of the facilities placed upon the property by Devils Lake public school district No. 1 in the proportion that the number of students enrolled at the school for the deaf of North Dakota bears to the total number of students entitled to use these facilities or as agreed to by the officials of the school for the deaf and the school district, or both.

SECTION 2. The state of North Dakota shall transfer in the name of the state of North Dakota by written document, executed by the governor and attested by the secretary of state, any interest, right, or title retained in the land transferred under chapter 247 of the 1975 Session Laws to Devils Lake public school district No. 1, including the interest, right, or title that provides if the land is ever no longer used for school purposes, then the land shall revert to the state of North Dakota upon payment to the school district of the same price for which it was purchased. In addition, the state shall remove and release any person who may have any interest, right, or title to the property from the covenant, agreement, servitude, or easement concerning the same property which provides for the covenant and agreement that the students enrolled at the school for the deaf of North Dakota are guaranteed use of the facilities placed upon the property by Devils Lake public school district No. 1 in the proportion that the number of students enrolled at the school for the deaf of North Dakota bears to the total number of students entitled to use these facilities.

SECTION 3. Sections 54-01-05.2 and 54-01-05.5 do not apply to any transfer or transaction under section 1 or 2 of this Act.

Approved April 13, 2001
Filed April 13, 2001

ELECTIONS

CHAPTER 200

HOUSE BILL NO. 1331 (Representatives Haas, L. Thoreson) (Senators Urlacher, Wardner)

INITIATIVE AND REFERENDUM PETITIONS

AN ACT to amend and reenact section 16.1-01-09 of the North Dakota Century Code, relating to initiative and referendum petitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁶ **SECTION 1. AMENDMENT.** Section 16.1-01-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-01-09. Initiative, referendum, or recall petitions - Signature - Form - Circulation.

1. a. A request of the secretary of state for approval of a petition to initiate or refer a measure may be presented over the signatures of the sponsoring committee on individual signature forms that have been notarized. The secretary of state shall prepare a signature form that includes provisions for identification of the measure; the printed name, signature, and address of the committee member; and notarization of the signature.
- b. Upon receipt of a petition to initiate or refer a measure, the secretary of state shall draft a short and concise statement that fairly represents the measure. The statement must be submitted to the attorney general for approval or disapproval. An approved statement must be affixed to the petition before it is circulated for signatures, must be called the "ballot title", and must be placed immediately before the full text of the measure.
- c. The secretary of state and the attorney general shall complete their review of a petition in not less than five, nor more than seven, business days, excluding Saturdays.
2. No person may sign any initiative, referendum, or recall petition circulated pursuant to article III of the Constitution of North Dakota unless the person is a qualified elector. No person may sign any petition more than once, and each signer shall add the signer's ~~post-office address including the signer's~~ complete residential address

¹⁰⁶ Section 16.1-01-09 was also amended by section 2 of House Bill No. 1352, chapter 201.

or ~~post-office box number~~ rural route or general delivery address and the date of signing. Every qualified elector signing a petition shall do so in the presence of the person circulating the petition. A referendum or initiative petition must be in substantially the following form:

REFERENDUM [INITIATIVE] PETITION
TO THE SECRETARY OF STATE,
STATE OF NORTH DAKOTA

We, the undersigned, being qualified electors request [House (Senate) Bill _____ passed by the _____ Legislative Assembly] [the following initiated law] be placed on the ballot as provided by law.

SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the state of North Dakota who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with law:

Name	Address
_____ (Chairman)	_____
_____	_____

BALLOT TITLE

(To be drafted by the secretary of state, approved by the attorney general, and attached to the petition before circulation.)

FULL TEXT OF THE MEASURE

IF MATERIAL IS UNDERSCORED, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. IF NO MATERIAL IS UNDERSCORED OR OVERSTRUCK, THE MEASURE CONTAINS ALL NEW MATERIAL WHICH IS BEING ADDED.

[The full text of the measure must be inserted here.]

INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen years old, you have lived in North Dakota thirty days, and you are a United States citizen. All signers must add their ~~entire post-office address, including post-office box number,~~ complete residential address or rural route or general delivery address and the date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition.

QUALIFIED ELECTORS

Month, Day, Year	Name of Qualified Elector	Post Office Address Residential Address or P.O. Box No. <u>Complete Rural Route or</u> <u>General Delivery Address</u>	City, State
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____

The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter. In this section for referral petitions "full text of the measure" means the bill as passed by the legislative assembly excluding the session and sponsor identification. In this section for initiative petitions "full text of the measure" means an enacting clause which must be: "BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA" and the body of the bill. If the measure amends the law, all new statutory material must be underscored and all statutory material to be deleted must be overstruck by dashes. When repealing portions of the law, the measure must contain a repealer clause and, in brackets, the text of the law being repealed.

- 3. Each copy of any petition provided for in this section, before being filed, must have attached an affidavit executed by the circulator in substantially the following form:

State of North Dakota)
) ss.
 County of _____)
 (county where signed)
 I, _____, being sworn, say that I am a qualified
 (circulator)
 elector; that I reside at _____;
 (address)

that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge and belief each person whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the person whose name it purports to be.

 (signature of circulator)

Subscribed and sworn to before me on _____, _____,
at

_____, North Dakota.
(city)

(Notary Seal) _____
(signature of notary)
Notary Public
My commission expires _____

4. A petition for recall must include, before the signature lines for the qualified electors as provided in subsection 2, the name of the person being recalled, the office from which that person is being recalled, and a list of the names and ~~post-office addresses~~ including the complete residential addresses or ~~post-office box numbers~~ rural route or general delivery addresses of not less than five qualified electors of the state, political subdivision, or district in which the official is to be recalled who are sponsoring the recall.
5. No petition shall be circulated under the authority of article III of the Constitution of North Dakota by a person who is less than eighteen years of age, nor shall the affidavit called for by subsection 3 be executed by a person who is less than eighteen years of age at the time of signing. All petitions circulated under the authority of the constitution and of this section must be circulated in their entirety. A petition may not include a statement of intent or similar explanatory information.
6. When signed petitions are delivered to the secretary of state, the chairperson of the sponsoring committee shall submit to the secretary of state an affidavit stating that to the best of that person's knowledge, the petitions contain at least the required number of signatures.
7. An initiative or referendum petition may be submitted to the secretary of state until midnight of the day designated as the deadline for submitting the petition.
8. An initiative petition may be circulated for one year from the date it is approved for circulation by the secretary of state.

Approved March 27, 2001
Filed March 27, 2001

CHAPTER 201

HOUSE BILL NO. 1352

(Representatives N. Johnson, Disrud, Hawken)
(Senator Watne)

RECALL PETITIONS

AN ACT to create and enact a new section to chapter 16.1-01 of the North Dakota Century Code, relating to recall petitions; and to amend and reenact sections 16.1-01-09 and 44-08-21 of the North Dakota Century Code, relating to initiative and referendum petitions and recall petitions of political subdivision officials.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 16.1-01 of the North Dakota Century Code is created and enacted as follows:

Recall petitions - Signature - Form - Circulation.

1. A person may not sign a recall petition circulated pursuant to article III of the Constitution of North Dakota or section 44-08-21 unless the person is a qualified elector. A person may not sign a petition more than once, and each signer shall add the signer's complete residential, rural route, or general delivery address and the date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition. A petition must be in substantially the following form:

RECALL PETITION

We, the undersigned, being qualified electors request that _____ (name of the person being recalled) the _____ (office of person being recalled) be recalled for the reason or reasons of _____:

RECALL SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the state of North Dakota and the political subdivision who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with law:

	<u>Name</u>	<u>Complete Residential, Rural Route, or General Delivery Address</u>
1.	_____ (Chairman)	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____

5.

INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen years old, you have lived in North Dakota for thirty days, and you are a United States citizen. All signers must add their complete residential, rural route, or general delivery address and date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition.

QUALIFIED ELECTORS

<u>Month, Day, Year</u>	<u>Name of Qualified Elector</u>	<u>Complete Residential, Rural Route, or General Delivery Address</u>	<u>City, State</u>
<u>1.</u>	_____	_____	_____
<u>2.</u>	_____	_____	_____
<u>3.</u>	_____	_____	_____
<u>4.</u>	_____	_____	_____
<u>5.</u>	_____	_____	_____
<u>6.</u>	_____	_____	_____
<u>7.</u>	_____	_____	_____
<u>8.</u>	_____	_____	_____

The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter.

2. Each copy of a petition provided for in this section, before being filed, must have attached an affidavit executed by the circulator in substantially the following form:

State of North Dakota)
) ss.
 County of _____)
 (county where signed)
 I, _____, being sworn, say that I am a qualified
 (circulator's name)
 elector; that I reside at _____;
 (address)

that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge and belief each person whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the person whose name it purports to be.

 (signature of circulator)

Subscribed and sworn to before me on _____, at

_____, North Dakota.

(city)

(Notary Seal) _____

(signature of notary)

Notary Public

My commission expires _____

3. A petition for recall must include, before the signature lines for the qualified electors as provided in subsection 1, the name of the person being recalled, the office from which that person is being recalled, and a list of the names and addresses of not less than five qualified electors of the state, political subdivision, or district in which the official is to be recalled who are sponsoring the recall.
4. A petition may not be circulated under the authority of article III of the Constitution of North Dakota or section 44-08-21 by a person who is less than eighteen years of age, nor may the affidavit called for by subsection 2 be executed by a person who is less than eighteen years of age at the time of signing. All petitions circulated under the authority of the constitution and of this section must be circulated in their entirety.
5. When recall petitions are delivered to the secretary of state or other filing officer with whom a petition for nomination to the office in question is filed, the chairman of the sponsoring committee shall submit to the secretary of state or other filing officer an affidavit stating that to the best of that person's knowledge, the petitions contain at least the required number of signatures.
6. The filing officer has a reasonable period, not to exceed thirty days, in which to pass upon the sufficiency of a recall petition. The filing officer may conduct a representative random sampling of the signatures contained in the petitions by the use of questionnaires, postcards, telephone calls, personal interviews, or other accepted information gathering techniques, or any combinations thereof, to determine the validity of the signatures. Signatures determined by the filing officer to be invalid may not be counted and all violations of law discovered by the filing officer must be reported to the state's attorney for possible prosecution.

¹⁰⁷ **SECTION 2. AMENDMENT.** Section 16.1-01-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹⁰⁷ Section 16.1-01-09 was also amended by section 1 of House Bill No. 1331, chapter 200.

16.1-01-09. Initiative, or referendum, ~~or recall~~ petitions - Signature - Form - Circulation.

- 1. a. A request of the secretary of state for approval of a petition to initiate or refer a measure may be presented over the signatures of the sponsoring committee on individual signature forms that have been notarized. The secretary of state shall prepare a signature form that includes provisions for identification of the measure; the printed name, signature, and address of the committee member; and notarization of the signature.
- b. Upon receipt of a petition to initiate or refer a measure, the secretary of state shall draft a short and concise statement that fairly represents the measure. The statement must be submitted to the attorney general for approval or disapproval. An approved statement must be affixed to the petition before it is circulated for signatures, must be called the "ballot title", and must be placed immediately before the full text of the measure.
- c. The secretary of state and the attorney general shall complete their review of a petition in not less than five, nor more than seven, business days, excluding Saturdays.
- 2. No person may sign any initiative, or referendum, ~~or recall~~ petition circulated pursuant to article III of the Constitution of North Dakota unless the person is a qualified elector. No person may sign any petition more than once, and each signer shall add the signer's post-office address including the signer's residential address or post-office box number and the date of signing. Every qualified elector signing a petition shall do so in the presence of the person circulating the petition. A referendum or initiative petition must be in substantially the following form:

REFERENDUM [INITIATIVE] PETITION
TO THE SECRETARY OF STATE,
STATE OF NORTH DAKOTA

We, the undersigned, being qualified electors request [House (Senate) Bill _____ passed by the _____ Legislative Assembly] [the following initiated law] be placed on the ballot as provided by law.

SPONSORING COMMITTEE

The following are the names and addresses of the qualified electors of the state of North Dakota who, as the sponsoring committee for the petitioners, represent and act for the petitioners in accordance with law:

Name	Address
_____ (Chairman)	_____
_____	_____

BALLOT TITLE

(To be drafted by the secretary of state, approved by the attorney general, and attached to the petition before circulation.)

FULL TEXT OF THE MEASURE

IF MATERIAL IS UNDERSCORED, IT IS NEW MATERIAL WHICH IS BEING ADDED. IF MATERIAL IS OVERSTRUCK BY DASHES, THE MATERIAL IS BEING DELETED. IF NO MATERIAL IS UNDERSCORED OR OVERSTRUCK, THE MEASURE CONTAINS ALL NEW MATERIAL WHICH IS BEING ADDED.

[The full text of the measure must be inserted here.]

INSTRUCTIONS TO PETITION SIGNERS

You are being asked to sign a petition. You must be a qualified elector. This means you are eighteen years old, you have lived in North Dakota thirty days, and you are a United States citizen. All signers must add their entire post-office address, including post-office box number, and the date of signing. Every qualified elector signing a petition must do so in the presence of the person circulating the petition.

QUALIFIED ELECTORS

	Month, Day, Year	Name of Qualified Elector	Post-Office Address Residential Address or P.O. Box No.	City, State
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____
7.	_____	_____	_____	_____
8.	_____	_____	_____	_____

The number of signature lines on each page of a printed petition may vary if necessary to accommodate other required textual matter. In this section for referral petitions "full text of the measure" means the bill as passed by the legislative assembly excluding the session and sponsor identification. In this section for initiative petitions "full text of the measure" means an enacting clause which must be: "BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA" and the body of the bill. If the measure amends the law, all new statutory material must be underscored and all statutory material to be deleted must be overstruck by dashes. When repealing portions of the law, the measure must contain a repealer clause and, in brackets, the text of the law being repealed.

- 3. Each copy of any petition provided for in this section, before being filed, must have attached an affidavit executed by the circulator in substantially the following form:

State of North Dakota)

County of _____) ss.
 _____)
 (county where signed)
 I, _____, being sworn, say that I am a qualified
 (circulator)
 elector; that I reside at _____;
 (address)

that each signature contained on the attached petition was executed in my presence; and that to the best of my knowledge and belief each person whose signature appears on the attached petition is a qualified elector; and that each signature contained on the attached petition is the genuine signature of the person whose name it purports to be.

 (signature of circulator)

Subscribed and sworn to before me on _____, _____,
 at

_____, North Dakota.
 (city)

(Notary Seal) _____
 (signature of notary)
 Notary Public
 My commission expires _____

4. A petition for recall must include, before the signature lines for the qualified electors as provided in subsection 2, the name of the person being recalled, the office from which that person is being recalled, and a list of the names and post-office addresses including the residential addresses or post-office box numbers of not less than five qualified electors of the state, political subdivision, or district in which the official is to be recalled who are sponsoring the recall.
- ~~5.~~ No petition shall be circulated under the authority of article III of the Constitution of North Dakota by a person who is less than eighteen years of age, nor shall the affidavit called for by subsection 3 be executed by a person who is less than eighteen years of age at the time of signing. All petitions circulated under the authority of the constitution and of this section must be circulated in their entirety. A petition may not include a statement of intent or similar explanatory information.
- ~~6.~~ 5. When signed petitions are delivered to the secretary of state, the chairperson of the sponsoring committee shall submit to the secretary of state an affidavit stating that to the best of that person's knowledge, the petitions contain at least the required number of signatures.
- ~~7.~~ 6. An initiative or referendum petition may be submitted to the secretary of state until midnight of the day designated as the deadline for submitting the petition.

SECTION 3. AMENDMENT. Section 44-08-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-08-21. Recall of elected officials of political subdivisions. An elected official of a political subdivision, except an official subject to recall pursuant to section 10 of article III of the Constitution of North Dakota, is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the office of the official sought to be recalled was on the ballot, not including other recall elections; ~~except in any political subdivision with a population of not more than one hundred, the petition must be signed by at least six electors.~~ An official who was appointed to fill a vacancy is subject to recall by petition of electors equal in number to twenty-five percent of the voters who voted in the most recent election that the office of the official sought to be recalled was on the ballot, not including other recall elections. The provisions of section ~~46.1-01-09~~ 1 of this Act, as they relate to signing and circulating recall petitions, apply to petitions under this section.

A recall petition must include a stated reason for the recall and be approved as to form prior to circulation by the secretary of state. The secretary of state shall complete the review of the form of a recall petition in not less than five, nor more than seven, business days, excluding Saturdays. To be effective, a recall petition must be submitted to the appropriate filing officer within ninety days after the date the recall petition is approved for circulation by the secretary of state.

~~The petition may include the stated reason for the recall and~~ Once circulated, the recall petition must be filed with the official filing officer with whom a petition for nomination to the office in question is filed unless that official filing officer is the person subject to recall, in which case the petition must be filed with the secretary of state. The official filing officer with whom the petition is filed shall pass on the sufficiency of a petition under this section in the manner required of the secretary of state under section ~~46.1-01-10~~ pursuant to section 1 of this Act. Except as otherwise provided in this section, the official filing officer shall call a special election to be held within sixty days if the official finds not sooner than fifty days nor later than sixty days following the date the filing officer certifies the petition valid and sufficient. No special election may be called if the that date would be within ninety days of the next scheduled election. An elector's name may not be removed from a recall petition.

The name of the official to be recalled must be placed on the ballot unless the official resigns within ten days after the ~~filing of the petition~~ filing officer certifies the petition is valid and sufficient. Other candidates for the office may be nominated in a manner provided by law and shall file nominating papers with the appropriate ~~official filing officer~~ official filing officer by the thirty-third day before the scheduled recall election. If the official resigns, the appropriate political subdivision governing body may call a special election or appoint a person to complete the unexpired term of the office. When the election results have been officially declared, the candidate receiving the highest number of votes is elected for the remainder of the term. No official is subject to recall twice during the term for which the official was elected. An official whose term expires at a regularly scheduled election occurring within one hundred ninety days after the date the petition is submitted to the secretary of state for approval for circulation is not subject to recall.

Approved March 27, 2001

Filed March 27, 2001

CHAPTER 202

HOUSE BILL NO. 1426

(Representatives Grande, Belter, Herbel, Kingsbury)

INITIATED AND REFERRED MEASURE CONTRIBUTIONS

AN ACT to amend and reenact subsection 11 of section 16.1-01-12, subsection 4 of section 16.1-08.1-01, section 16.1-08.1-03.1, subsection 3 of section 16.1-08.1-03.3, sections 16.1-08.1-04, and 16.1-08.1-06 of the North Dakota Century Code, relating to initiated or referred measure contribution statements definitions and contribution reporting; and to repeal section 16.1-08.1-03.6 of the North Dakota Century Code, relating to federal campaign committee contributions and contributions made to other candidates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 11 of section 16.1-01-12 of the North Dakota Century Code is amended and reenacted as follows:

11. Pay or offer to pay any person, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained for circulating an initiative, referendum, or recall petition. This subsection does not prohibit the payment of salary and expenses for circulation of the petition on a basis not related to the number of signatures obtained, as long as the circulators file their intent to remunerate prior to submitting the petitions and fully disclose all expenditures and revenues upon submission of the petitions to the secretary of state, in the case of initiative and referendum petitions, fully disclose all contributions received pursuant to chapter 16.1-08.1 to the secretary of state upon submission of the petitions. The disclosure of contributions received under this section does not affect the requirement to file a pre-election report by persons soliciting or accepting contributions 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 under chapter 16.1-08.1.

SECTION 2. AMENDMENT. Subsection 4 of section 16.1-08.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations.

SECTION 3. 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 promoting passage or defeat of initiated or referred measure.

1. Any person 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.
2. ~~A 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 any statewide initiated or referred measure~~ A person 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.

SECTION 4. AMENDMENT. Subsection 3 of section 16.1-08.1-03.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. All political committees 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 yearend statement covering the entire calendar year must be filed no later than the thirty-first day 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 committee has not received any contributions or made any expenditures in excess of two hundred dollars during the reporting period, the political committee shall file a statement as required by this chapter.

¹⁰⁸ **SECTION 5. 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, 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 or more in the twenty-day period ~~prior to~~ before any election from any individual contributor, that candidate, political party, committee, or person shall make and file a supplemental statement in the same form as required by section 16.1-08.1-02 ~~or~~, 16.1-08.1-03, 16.1-08.1-03.1, or 16.1-08.1-03.3 stating the name and street address of such 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 6. AMENDMENT. Section 16.1-08.1-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06. Contributions statement requirements.

1. A statement required by this chapter to be filed with the secretary of state must be:
 - a. Deemed properly filed when deposited ~~in an established post office within the prescribed time, postage affixed, and directed with or delivered~~ to the secretary of state, but if it within the prescribed time. 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, a duplicate of the statement must be promptly filed upon notice by the secretary of state of its nonreceipt.
 - 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

¹⁰⁸ Section 16.1-08.1-04 was also amended by section 1 of House Bill No. 1370, chapter 208.

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 7. REPEAL. Section 16.1-08.1-03.6 of the North Dakota Century Code is repealed.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 203

HOUSE BILL NO. 1318

(Representatives Tieman, DeKrey, Eckre, Haas, Niemeier)

ELECTION LAW REVISIONS

AN ACT to amend and reenact subsection 2 of section 16.1-05-01, subsection 2 of section 16.1-07-08, subsection 3 of section 16.1-10-01, sections 16.1-10-02, 16.1-10-04.1, 16.1-11-18, 16.1-11-19, and 16.1-15-25 of the North Dakota Century Code, relating to political party reorganization, election officer appointment, absentee ballot affidavits, corrupt election practices, and filling vacancies; and to repeal sections 16.1-12-08 and 46-05-05 of the North Dakota Century Code, relating to filling vacancies and rates for political announcements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 16.1-05-01 of the North Dakota Century Code is amended and reenacted as follows:

2. The election judges and poll clerks for each precinct must be appointed in writing by the district chairs representing the two parties that cast the largest number of votes in the state at the last general election. ~~Each election judge and poll clerk must be given a certificate of appointment signed by the chair of the district committee of the judge's party.~~ In voting precincts or districts in which over one thousand votes are cast in any election, the county auditor may request each district party chair to appoint an additional election judge. In voting precincts or districts in which over three hundred votes are cast in any election each district party chair may appoint additional poll clerks as determined by the county auditor. The district party chair shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges and poll clerks at least twenty-one days before the primary, general, or special election. If this notice is not received within the time specified in this section, the county auditor shall appoint the judges and poll clerks. If the county auditor has exhausted all practicable means to select judges and clerks from within the voting precinct and vacancies still remain, the county auditor may select election judges and clerks who reside outside of the voting precinct but who reside within the precinct's legislative district. If vacancies still remain, the county auditor may select election judges and clerks who reside outside of the legislative district but who reside within the county. If at any time before or during an election, it shall be made to appear to an election inspector, by the affidavit of two or more qualified electors of the precinct, that any election judge or poll clerk is disqualified under this chapter, the inspector shall remove that judge or clerk at once and shall fill the vacancy by appointing a qualified person of the same political party as that of the judge or clerk removed. If the disqualified judge or clerk had taken the oath of office as prescribed in this chapter, the inspector shall place the oath or affidavit before the state's attorney of the county.

¹⁰⁹ **SECTION 2. AMENDMENT.** Subsection 2 of section 16.1-07-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 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 with the notation "witness to the mark".

SECTION 3. AMENDMENT. Subsection 3 of section 16.1-10-01 of the North Dakota Century Code is amended and reenacted as follows:

3. Is guilty of the use of state services or property or the services or property of a political subdivision of the state for political purposes.

SECTION 4. AMENDMENT. Section 16.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-10-02. Use of state or political subdivision services or property for political purposes.

1. No person may use any property belonging to or leased by, or any service which is provided to or carried on by, either directly or by contract, the state or any agency, department, bureau, board, ~~or~~ commission, or political subdivision thereof, for any political purpose.
2. The following definitions must be used for the purposes of this section:

¹⁰⁹ Section 16.1-07-08 was also amended by section 2 of Senate Bill No. 2372, chapter 205.

- a. "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, political committee, political party, or any other person but does not include activities undertaken in the performance of a duty of state or political subdivision office.
- b. "Property" includes, but is not limited to, motor vehicles, telephones, typewriters, adding machines, postage or postage meters, funds of money, and buildings. However, nothing in this section may be construed to prohibit any candidate, political party, committee, or organization from using any public building for such political meetings as may be required by law, or to prohibit such candidate, party, committee, or organization from hiring the use of any public building for any political purpose if such lease or hiring is otherwise permitted by law.
- c. "Services" includes, but is not limited to, the use of employees during regular working hours for which such employees have not taken annual or sick leave or other compensatory leave.

SECTION 5. AMENDMENT. Section 16.1-10-04.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-10-04.1. Certain political advertisements to disclose name of sponsor - Name disclosure requirements. Every political advertisement by newspaper, pamphlet or folder, display card, sign, poster, or billboard, or by any other similar public means, on behalf of or in opposition to any candidate for public office, designed to assist, injure, or defeat the candidate by reflecting upon the candidate's personal character or political action, must disclose ~~at the bottom of~~ on the advertisement the name ~~or names of the sponsor or sponsors of the advertisement, and the name or names of the person, persons, associations, or partnerships~~ as defined in section 16.1-08.1-01, or political party paying for the advertisement. If the name of ~~an~~ a political party, association, or partnership is used, the disclaimer must also include the name of the chairman or other responsible person from the political party, association, or partnership. The name ~~or names of the person, persons, associations, or partnerships~~ or political party paying for any radio or television broadcast containing any advertising announcement for or against any candidate for public office must be announced at the close of the broadcast. If the name of ~~an~~ a political party, association, or partnership is used, the disclaimer must also include the name of the chairman or other responsible person from the political party, association, or partnership. In every political advertisement in which the name of the ~~sponsor or person, association, or partnership~~ or political party paying for the advertisement is disclosed, the first and last name of any named person must be disclosed. An advertisement paid for by an individual candidate or group of candidates must disclose that the advertisement was paid for by the individual candidate or group of candidates. The first and last name or names of the candidates paying for the advertisement are not required to be disclosed. This section does not apply to campaign buttons.

SECTION 6. 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.

~~With the exception of vacancies filled pursuant to section 16.1-12-08, vacancies~~
Vacancies to be filled according to the provisions of this section may be filled not later than sixty days prior to the election.

SECTION 7. AMENDMENT. Section 16.1-11-19 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-19. Filling vacancy existing on no-party ballot - Petition required - Time of filing. If a vacancy exists on a no-party ballot for a state office or for judge of a district court, the vacancy may be filled by filing with the secretary of state, before four p.m. on the ~~fifty-sixth~~ sixtieth day prior to the primary election, a written petition as provided in section 16.1-11-06, stating that the petitioner desires to become a candidate for nomination to the office for which a vacancy exists. If the petition is mailed, it must be in the possession of the secretary of state before four p.m. on the ~~fifty-sixth~~ sixtieth day prior to the primary election. The petition for the nomination of any person to fill the vacancy must be signed by qualified electors equal in number to at least two percent of the total vote cast for governor at the most recent general election in the state or district at which the office of governor was voted upon, but in no case may more than three hundred signatures be required.

If a vacancy exists on a no-party ballot in a county or district within a county, the vacancy may be filled by filing with the county auditor, before four p.m. of the ~~fifty-sixth~~ sixtieth day prior to the primary election, a written petition as provided in section 16.1-11-11, stating that the petitioner desires to become a candidate for nomination to the office for which a vacancy exists. If the petition is mailed, it must be in the possession of the county auditor before four p.m. on the ~~fifty-sixth~~ sixtieth day prior to the primary election. The petition for the nomination of any person to fill the vacancy must be signed by qualified electors as provided in subdivision c of subsection 2 of section 16.1-11-11. A vacancy in the no-party ballot must be deemed to exist when a candidate who was qualified by filing a petition pursuant to section 16.1-11-06 or 16.1-11-11 dies, resigns, or otherwise becomes disqualified to have the candidate's name printed on the ballot.

SECTION 8. AMENDMENT. Section 16.1-15-25 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-25. County auditor to forward abstract of votes of general election to secretary of state - Contents - Abstract for presidential electors. Within ten days and before four p.m. on the tenth day following any general election, the county auditor of each county, under official seal, shall return to the secretary of state a certified abstract of the votes cast in the county at the election for each candidate for state and congressional offices, judges of the district courts, candidates for the legislative assembly, and for amendments to the constitution and other measures. In presidential years the county auditor shall make a separate certified abstract of the votes cast for electors for president and vice president of the United States. The separate abstract for presidential electors must be sealed, endorsed "presidential election returns", and must be transmitted by registered or certified mail to the secretary of state. ~~At the time the county auditor transmits the certified abstract of the votes cast in the county, the county auditor shall file with the secretary of state the names and addresses of the persons who were elected to the various county offices in the county.~~

SECTION 9. REPEAL. Sections 16.1-12-08 and 46-05-05 of the North Dakota Century Code are repealed.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 204

HOUSE BILL NO. 1047 (Legislative Council) (Judiciary Committee)

VOTE CHALLENGING

AN ACT to amend and reenact section 16.1-05-06 of the North Dakota Century Code, relating to challenging the right of a person to vote.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-05-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-05-06. Challenging right of person to vote - Affidavit 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 of the election board and poll challengers may challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector. Members of the election board or poll challengers may challenge a voter if they know or have reason to believe any of the following:
 - a. The person offering to vote does not meet the age or citizenship requirements.
 - b. The person offering to vote has never voted in the precinct before and fails to provide reasonable evidence of residency in the precinct.
 - c. Except as provided in section 16.1-01-05, the person offering to vote physically resides outside of the precinct.
 - d. The person offering to vote does not meet the residency requirements provided in section 16.1-01-05.
3. A poll challenger or election board member may request that the person offering to vote provide an appropriate form of identification to address any of the voting eligibility concerns listed in subsection 2. If any person offering to vote is challenged by a the identification provided does not adequately resolve the voter eligibility concerns of the poll challenger or by a member of the election board member, the challenged person, unless the challenge is withdrawn, shall stand aside and may not vote unless the challenged person executes an affidavit, acknowledged

before the election inspector, that the challenged person 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 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 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. No poll challenger or checker may be a member of the election board.

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 205

SENATE BILL NO. 2372

(Senator Dever)
(Representatives Dosch, Meier)

ABSENT VOTER'S BALLOTS

AN ACT to create and enact a new subsection to section 16.1-07-08 of the North Dakota Century Code, relating to absent voter's ballots; and to amend and reenact section 16.1-07-04 of the North Dakota Century Code, relating to the distribution of absent voter's ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-07-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-04. When ballots furnished proper officials. The county auditor, or any other officer required by law to prepare any general, special, or primary state election ballots or any county election ballots, shall prepare, have printed, and deliver to the county auditor at least forty days ~~prior to~~ before the holding of any general, special, or primary state election a sufficient number of absent voter ballots for the use of all voters likely to require such ballots for that election. In city or school elections the auditor or clerk of the city, the business manager of the school district, or any other officer required by law to prepare city or school election ballots, shall prepare and have printed and available for distribution to the public at least twenty days ~~prior to~~ before the holding of any city or school election a sufficient number of absent voter ballots for the use of all voters likely to require such ballots for that election. Officers authorized to distribute absent voter's ballots under this chapter shall ensure all ballots used as absent voter's ballots are secure at all times and accessible only to those persons under the officer's supervision for distribution.

¹¹⁰ **SECTION 2.** A new subsection to section 16.1-07-08 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

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.

Approved March 22, 2001
Filed March 22, 2001

¹¹⁰ Section 16.1-07-08 was also amended by section 2 of House Bill No. 1318, chapter 203.

CHAPTER 206

HOUSE BILL NO. 1354

(Representatives Galvin, Byerly, Grande, M. Klein)
(Senator Thane)

ABSENTEE BALLOT COUNTING

AN ACT to amend and reenact sections 16.1-07-09 and 16.1-15-19 and subsections 5 and 6 of section 16.1-16-01 of the North Dakota Century Code, relating to the counting of absentee ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-07-09 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-09. Canvassing of mailed absent voters' ballots received late. In the case of congressional, state, county, city, or school district elections, if an envelope postmarked or otherwise officially marked by the United States postal service or other mail delivery system before the date of election and containing an absent voter's ballot is received by the officer too late to be forwarded to the proper voting precinct in time to be tabulated, the ballot must be tallied by the canvassing board of the county, the governing body of the city, or the school board of the school district, as the case may be, at the time the returns are canvassed. Any envelope without a postmark or other official marking by the United States postal service or other mail delivery system or with an illegible postmark or other official marking and containing an absentee voter's ballot must be received by mail by the proper officer within two days after the election to be canvassed and counted. An absent voter may personally deliver the absent voter's ballot to the appropriate officer's office at any time before five p.m. on the day before the election. Before forwarding any ballot to a canvassing board pursuant to this section, the officer forwarding the ballot shall print the date of receipt on the envelope. Upon receipt, the canvassing board shall first determine that the elector was qualified to vote in that precinct and that the elector did not previously vote in that precinct on the date of the election before allowing the ballot to be tallied.

SECTION 2. AMENDMENT. Section 16.1-15-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16.1-15-19. County canvassing board to disregard technicalities, misspelling, and abbreviations - Votes from unestablished precincts disregarded. In canvassing the election returns, the county canvassing board shall disregard technicalities, misspelling, and the use of initial letters or abbreviations of the name of any candidate for office if it can be ascertained for whom the vote was intended. The board may not count votes polled in any place except at established precincts. The county canvassing board is authorized to stamp and initial ~~properly postmarked~~ all absentee ballots cast pursuant to section 16.1-07-09 that were not considered or counted or were rejected at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12.

SECTION 3. AMENDMENT. Subsections 5 and 6 of section 16.1-16-01 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. Except for recounts conducted by political subdivisions other than counties, recounts must be conducted by the county auditor who 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, whether the ballots were counted at the precinct or the county canvass, and all ~~properly postmarked~~ 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 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.
6. The persons entitled to participate at the recount are:
 - a. Each candidate involved in the recount, either personally or by a representative.
 - b. A qualified elector favoring each side of a question if the recount involves a question or proposition submitted to a vote of the electorate.

The persons allowed to participate may challenge the acceptance or exclusion of any ballot. The person challenging a ballot must state the reason for the challenge based upon the law, and the county auditor or other political subdivision election official shall count the challenged ballot as the auditor or election official deems proper and shall then set the ballot aside with a notation that it was challenged and how it was counted. At the conclusion of the recount, the county auditor or other election official shall submit all challenged ballots to the recount board for decision. Except for political subdivision recounts other than counties, the recount board must be composed of the state's attorney of the county, the chairman of the board of county commissioners, and the clerk of the district court of the county. Unless otherwise specified by law, for a political subdivision other than a county, the governing body of the political subdivision shall appoint the recount board. No person may serve on the recount board if the person would not be qualified to serve on the election board pursuant to subsection 2 of section 16.1-05-02. If any of the members of the recount board are disqualified or cannot serve for any other reason, the members of the board of county commissioners or other political subdivision governing body who would be qualified to serve on the board shall appoint disinterested qualified electors of the county or other political subdivision to serve as alternates. The recount board shall review all challenged ballots and on majority vote shall decide how those ballots are counted. The recount board is authorized to stamp and initial ~~properly postmarked~~ all absentee ballots cast pursuant to section 16.1-07-09 that were not considered or counted or were rejected at the various precincts in the county for the reasons provided in sections 16.1-07-11 and 16.1-07-12 or by the county canvassing boards as provided in section 16.1-15-19. The decision of the recount board is final, subject to the right to contest the election as provided in this chapter. If during the recount a recess is

called, the county auditor or other political subdivision election official shall take appropriate steps to safeguard the ballots.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 207

HOUSE BILL NO. 1456 (Representatives Kroeber, Winrich) (Senator Every)

CAMPAIGN CONTRIBUTION STATEMENT FILING

AN ACT to create and enact a new section to chapter 16.1-08.1 of the North Dakota Century Code, relating to the filing of campaign contribution statements by political committees; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Contributions statement required of political committees.

1. A political committee that solicits or accepts contributions for any political purpose shall file statements as required by this section.
2. A 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 political committee required to file a statement under this section shall file the statement in the office of 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 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.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 208

HOUSE BILL NO. 1370

(Representatives Kroeber, Fairfield)
(Senators Heitkamp, C. Nelson)

SUPPLEMENTAL CAMPAIGN CONTRIBUTION STATEMENTS

AN ACT to amend and reenact section 16.1-08.1-04 of the North Dakota Century Code, relating to supplemental campaign contribution statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹¹ **SECTION 1. 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 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 ~~or more~~ in the twenty-day period ~~prior to~~ before any election from any individual contributor, that candidate, political party, 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, or 16.1-08.1-03.1, stating the name and street address of ~~such~~ 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.

Approved April 5, 2001
Filed April 5, 2001

¹¹¹ Section 16.1-08.1-04 was also amended by section 5 of House Bill No. 1426, chapter 202.

CHAPTER 209

SENATE BILL NO. 2230 (Senators Solberg, G. Nelson, Traynor) (Representatives Devlin, N. Johnson)

LEGISLATIVE VACANCY FILLING

AN ACT to amend and reenact sections 16.1-13-10 and 44-02-02 of the North Dakota Century Code, relating to filling a vacancy in a legislative office and resignation of a member of the legislative assembly; and to repeal section 16.1-13-11 of the North Dakota Century Code, relating to the duty of the governor when a vacancy occurs in the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 - Special election to fill. ~~Whenever~~ If a vacancy in the office of a member of the legislative assembly occurs, the county auditor of the county in which such the former member resides or resided shall notify the ~~governor~~ chairman of the legislative council of the vacancy. The county auditor need not notify the ~~governor~~ chairman of the legislative council of the resignation of a member of the legislative assembly when the resignation was made pursuant to under section 44-02-02. Upon receiving such notification, the governor, if there is a session of the legislative assembly between the time such vacancy occurs and the time of the holding of the next general election, shall issue a writ of election directed to the auditor of each affected county commanding the auditor to notify the several boards of election in the county or district in which the vacancy exists to hold a special election to fill such vacancy at a time designated by the governor. If there is no session of the legislative assembly between the time such vacancy occurs and the time of the holding of the next general election, the special election must be held at the same time as the general election. If the term of office of the member whose office is vacated expires prior to the next session of the legislative assembly, no election shall be held to fill such vacancy. 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. 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 the next general election to serve for the remainder of the term of office for that office.

SECTION 2. AMENDMENT. Section 44-02-02 of the North Dakota Century Code is amended and reenacted as follows:

44-02-02. Resignations of officers - To whom made. The resignation of an officer must be in writing and must be made as follows:

1. The governor and lieutenant governor, to the legislative assembly, if it is in session, and if not, to the secretary of state.
2. Any other state or district officer, to the governor.
3. A member of the legislative assembly, to the presiding officer of the branch of which ~~he~~ the individual is a member, when in session, and when not in session, to the ~~governor~~ chairman of the legislative council. When made to the presiding officer, ~~he~~ the presiding officer at once shall notify the ~~governor thereof~~ chairman of the legislative council of the resignation.
4. An officer of the legislative assembly, to the branch of which ~~he~~ the individual is an officer.
5. An elective county officer, by filing or depositing ~~such~~ the resignation in the office of the county auditor, except that the resignation of the county auditor must be filed or deposited with the board of county commissioners. Any ~~such~~ resignation under this subsection, unless a different time is fixed therein, takes effect upon ~~such~~ the filing or deposit.
6. An officer of a civil township, to the board of supervisors of the township, except that a member of ~~such~~ the board shall submit ~~his~~ the member's resignation to the township clerk, and the township clerk forthwith shall give to the county auditor notice of the resignation of all officers whose bonds are filed with ~~such~~ that officer.
7. Any officer holding ~~his~~ office by appointment, to the body, board, court, or officer which appointed ~~him~~ the officer.

SECTION 3. REPEAL. Section 16.1-13-11 of the North Dakota Century Code is repealed.

Approved March 22, 2001
Filed March 22, 2001

FIRES

CHAPTER 210

HOUSE BILL NO. 1323

(Representatives Disrud, Maragos, Mueller)

(Senators Heitkamp, Krebsbach)

FIREFIGHTER'S ASSOCIATION

AN ACT to provide for legislative council correction of references by the fifty-seventh legislative assembly to the North Dakota firemen's association; and to amend and reenact sections 18-03-01, 18-03-02, 18-03-03, 18-03-04, 18-03-05, 18-03-06, 18-03-07, 18-03-08, 18-04-01, 18-04-08, 18-10-16, and 26.1-01-07.5 of the North Dakota Century Code, relating to the North Dakota firefighter's association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-03-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-03-01. North Dakota firemen's firefighter's association - How constituted. The North Dakota ~~firemen's~~ firefighter's association consists of the various organized fire departments and fire protection districts within this state, and each fire department, fire protection district, and firefighter within the state is entitled to membership in the association upon compliance with the constitution and bylaws of the association.

SECTION 2. AMENDMENT. Section 18-03-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-03-02. Fire schools. Fire schools must be held annually under the direction of the North Dakota ~~firemen's~~ firefighter's association. The schools must be held at such times and in such places in North Dakota as may be designated by the North Dakota ~~firemen's~~ firefighter's association executive board. Fire schools may be held by teleconference, video, or other alternative media.

SECTION 3. AMENDMENT. Section 18-03-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-03-03. Association to report to office of management and budget time and place of school and name of treasurer. The North Dakota ~~firemen's~~ firefighter's association shall submit to the office of management and budget an annual report of all fire schools held in the state. The association also shall furnish to the office of management and budget the name and address of the treasurer of the association.

SECTION 4. AMENDMENT. Section 18-03-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-03-04. Association to furnish bond. The North Dakota ~~firemen's~~ firefighter's association shall file with the director of the office of management and budget a bond in the penal sum of two thousand dollars conditioned for the faithful disposition of the funds appropriated by the legislative assembly for the use of the association in conducting fire schools.

SECTION 5. AMENDMENT. Section 18-03-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-03-05. Statement of desired appropriation submitted to office of the budget. Not later than July first of each year next preceding a regular session of the legislative assembly, the director of the budget shall send to the North Dakota ~~firemen's~~ firefighter's association a suitable blank form to be filled out with an itemized statement of the amount of money necessary to promote the efficiency and growth of the different fire departments and fire protection districts of the association and to conduct the fire schools to be held during the succeeding biennium under the direction of the association. The association shall return the blanks properly filled out as provided in section 54-44.1-04.

SECTION 6. AMENDMENT. Section 18-03-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-03-06. Director of the budget to prepare estimate for firemen's firefighter's association. The director of the budget shall include, with its estimates, an estimate of the amounts necessary to be appropriated to promote the efficiency and growth of the different fire departments and fire protection districts of the association and to conduct fire schools.

SECTION 7. AMENDMENT. Section 18-03-07 of the North Dakota Century Code is amended and reenacted as follows:

18-03-07. Office of management and budget to pay sum appropriated to association treasurer. Not later than the first day of August of each year, the office of management and budget, by warrants prepared and issued by the office and signed by the state auditor, shall pay to the treasurer of the North Dakota ~~firemen's~~ firefighter's association the sum appropriated by the legislative assembly for that year. ~~Such~~ The sum, however, may not be paid until the treasurer of the association has filed the bond required in section 18-03-04.

SECTION 8. AMENDMENT. Section 18-03-08 of the North Dakota Century Code is amended and reenacted as follows:

18-03-08. Report of use of money. On or before the first day of July of each year, the president, secretary, and treasurer of the North Dakota ~~firemen's~~ firefighter's association shall make to the office of management and budget a full and complete report, duly verified by the secretary, of the disposition of all moneys received; the association shall provide for an audit annually by a certified public accountant or licensed public accountant who shall submit the audit report to the state auditor's office. When the report is in the form and style prescribed by the state auditor, the state auditor may not conduct an audit of the records of the association.

SECTION 9. AMENDMENT. Section 18-04-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-04-01. Eligibility for participation in fund created from premium tax on fire insurance companies. To become eligible for the benefits provided under

this chapter, a city, or one or more townships or fire districts, shall maintain therein for a period of at least eight months before the filing of the certificate required under section 18-04-02 an organized fire district or department which:

1. Has been in actual existence for the period specified in this section;
2. ~~Has had as a part of its equipment at least one fire engine or truck~~
Meets the minimum requirements for class 9 protection or better; and
3. ~~Has had a membership of at least fifteen persons. The department or district also must be a member of the North Dakota firemen's association in good standing at the time the benefits are paid.~~
4. Has been in compliance with the requirements to report fires as set forth in section 18-01-06.

Change in a fire department's name, or incorporation into a fire district, must be deemed a waiver of the eight-month waiting period for filing a certificate of existence under section 18-04-02.

SECTION 10. AMENDMENT. Section 18-04-08 of the North Dakota Century Code is amended and reenacted as follows:

18-04-08. Notification of municipalities entitled to benefits. On or before the first day of June in each year, the secretary of the North Dakota ~~firemen's~~ firefighter's association shall notify the auditor of each municipality entitled to the benefits provided in this chapter of the name of the treasurer of each department or separately organized company in good standing in the North Dakota ~~firemen's~~ firefighter's association.

SECTION 11. AMENDMENT. Section 18-10-16 of the North Dakota Century Code is amended and reenacted as follows:

18-10-16. State fire marshal to establish rural routing systems. The state fire marshal, with the advice and cooperation of the North Dakota ~~firemen's~~ firefighter's association, may establish a system of rural routings which must be as uniform as is practicable throughout the state, for the purpose of aiding rural firefighting equipment and other emergency vehicles in locating and arriving quickly at the scene of a fire or other emergency within any area which they might logically be called upon to serve.

SECTION 12. AMENDMENT. Section 26.1-01-07.5 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-07.5. Fire district maps - Insurance applications to show fire district in which property is located - Penalty. Before December first of each year, the ~~commissioner of~~ insurance commissioner shall publish maps of the fire districts of the state for use by insurers under this section for the following calendar year. The state ~~firemen's~~ firefighter's association and the state fire marshal shall assist the ~~commissioner of~~ insurance commissioner in preparing the maps. After December 31, 1993, no insurer may issue or renew a policy for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, commercial multiple peril, or crop hail insurance coverage for property in this state unless the application identifies each fire district in which the insured property is located. The application must identify the property and insured value of the property located within each fire district if the policy provides coverage for property that is not all within a single

district. For purposes of this section, "fire district" means rural fire protection district, city, or area served by a certified rural fire department. An insurer that is found by the commissioner to be in violation of this section is subject to a penalty of one hundred dollars for each ~~such~~ violation to be deposited in the insurance tax distribution fund. The ~~commissioner of insurance~~ commissioner may adopt rules necessary for administration of this section, including rules governing preparation, charges for, and use of maps under this section.

SECTION 13. MEASURES ENACTED BY THE FIFTY-SEVENTH LEGISLATIVE ASSEMBLY RELATING TO THE NORTH DAKOTA FIREMEN'S ASSOCIATION. The legislative council may replace appropriate references to the North Dakota firemen's association in any measure enacted by the fifty-seventh legislative assembly with references to the North Dakota firefighter's association, as appropriate. References inserted may be adjusted to suit context and grammar of the sections and must be inserted so as to harmonize the legislative measure with regard to the name change provided by this Act.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 211

HOUSE BILL NO. 1118

(Political Subdivisions Committee)

(At the request of the Office of Management and Budget)

FIRE INSPECTIONS

AN ACT to amend and reenact section 18-08-12 of the North Dakota Century Code, relating to fire inspection of state buildings and institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-08-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-08-12. Annual Periodic fire inspection of state buildings and institutions. ~~An annual fire inspection shall be performed at each state institution and building.~~

1. ~~The state fire marshal, or the marshal's designee, shall inspect annually the state penitentiary, the James River correctional center, the Missouri River correctional center, the North Dakota youth correctional center, the state developmental center at westwood park, Grafton, the state veterans' home, and the state hospital. The annual inspection of all other state institutions and occupied state-owned buildings, except residential buildings, must be made by the fire department of the city or fire protection district in which the institution or building is located, at the direction of the officer in charge of the institution or building, who state fire marshal, or the marshal's designee, at least once every three years. The officer in charge of the institution or building shall prepare a response to the report based upon the findings of the fire inspection. Inspection and reporting under this section for residential buildings must be performed annually. The report, which must contain specifications of any violations, must be submitted to the responsible board, agency, or commission and a copy of the response to the report must be submitted to the state fire marshal by the officer in charge of the state institution or building. If the report indicates that any All violations can in the report must be corrected within the current budget of the responsible board, agency, or commission, and action to correct the violations, unless good cause can be demonstrated to the attorney general, must be initiated within thirty days of receipt of the report by the responsible board, agency, or commission.~~
2. For purposes of this section, a "fire inspection" is a procedure performed in accordance with standards set forth in the ~~uniform state~~ building code, the ~~fire protection~~ code of the ~~building officials and code administrators~~ local jurisdiction, or the code of the national fire protection association.

3. For purposes of this section, "residential building" includes all state-owned buildings used in whole or in part for providing overnight sleeping accommodations to one or more persons on a regular or occasional basis, except for single-family dwellings.

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 212

SENATE BILL NO. 2057

(Senators Grindberg, C. Nelson)
(Representative Hawken)

ALTERNATE FIREFIGHTERS RELIEF ASSOCIATION BENEFITS

AN ACT to amend and reenact section 18-11-26 of the North Dakota Century Code, relating to alternate firefighters relief association plan benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-11-26 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

18-11-26. Service pensions - Formulation of optional plan. With the consent of the governing body of the city involved, and in substitution for a pension payment schedule provided in section 18-11-15, a firefighters relief association may adopt a monthly service pension plan for members of the association as provided in this section.

1. Retirement date is the first day of the month next following the month in which the member attains the age of fifty-five years.
2. Retirement benefits for members reaching the retirement date equal an annual amount, payable monthly, comprised of a service benefit that equals two and ~~thirty-three~~ fifty hundredths percent of a ~~first-class firefighter's~~ firefighter's final salary at the time of the member's retirement multiplied by the number of years of service employment up to a maximum of thirty years. For purposes of this subsection, final salary for a first-class firefighter is the final salary at the time of the member's retirement and for officers or members of higher rank is the average salary for the last five years of employment. As used in this subsection, salary does not include overtime or longevity payments.
3. Upon termination of employment after completing ten years of eligible employment but before the retirement date, a member is eligible to receive deferred vested retirement benefits payable commencing on the retirement date equal to one hundred percent of the member's accrued benefits.
4. Members participating in a firefighters relief association paying a monthly service pension to members of the association under this section must serve ten years before they are eligible for a service pension.
5. Members participating in a firefighters relief association who have been active members for at least one year, and who are not receiving salary or accumulated sick leave from the city and who are unable, because of physical or mental disability, to perform the duties of a firefighter, are eligible to receive a disability pension from the association. Disability

benefits are not payable for a disability that occurs in a firefighter's first year of membership in the association. The disability pension amount is equal to a percentage of the monthly salary of a first-class firefighter on January 31 of the year that the pension is paid, unless the member is eligible for a larger service pension, in which case the member is entitled to draw an annual pension amount equal to the member's service pension. The percentage of the monthly salary of a first-class firefighter which is payable as a disability pension is dependent upon the member's years of service as follows:

<u>Years of Completed Service</u>	<u>Maximum Percentage</u>
<u>0</u>	<u>0%</u>
<u>1</u>	<u>10%</u>
<u>2</u>	<u>20%</u>
<u>3</u>	<u>30%</u>
<u>4</u>	<u>40%</u>
<u>5</u>	<u>50%</u>

Benefits may not be increased by reason of increases in salary of a first-class firefighter occurring after the initial calculation of pension benefits. The payments must remain fixed, except the benefit earned by years of service computation. If a member is receiving workers' compensation benefits or other similar benefits, the sum of the member's disability pension payable from the association and amounts received in workers' compensation benefits or other similar benefits may not be greater than one hundred percent of the monthly salary of the member at the time the member's disability began. However, when a member is no longer receiving workers' compensation benefits or other similar benefits, the member's disability pension is payable in the amount as determined under this subsection without regard to workers' compensation benefits or other similar benefits, including the greater of the amount of the disability pension or the service pension, if applicable.

6. Upon the recommendation of the association's actuary, a firefighters relief association may provide a thirteenth check to pensioners and beneficiaries under the plan. Payment of the thirteenth check is contingent upon portfolio performance as determined by the association's actuary and may not be issued without approval of the actuary.

Approved March 16, 2001
 Filed March 16, 2001

FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 213

HOUSE BILL NO. 1096

(Industry, Business and Labor Committee)
(At the request of the State Board of Pharmacy)

PHARMACY PRACTICE

AN ACT to amend and reenact subdivision e of subsection 1 of section 19-02.1-14.1, subsection 4 of section 19-02.1-15, subdivision a of subsection 23 of section 19-03.1-01, subsection 6 of section 19-03.1-05, subsection 4 of section 19-03.1-09, subsections 4 and 6 of section 19-03.1-11, subsection 1 of section 19-03.1-22, and subsection 26 of section 43-15-01 of the North Dakota Century Code, relating to the practice of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision e of subsection 1 of section 19-02.1-14.1 of the North Dakota Century Code is amended and reenacted as follows:

- e. "Prescription drug" means ~~any~~ a drug defined by section 503(b) of the federal act, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription-" or "Rx Only".

SECTION 2. AMENDMENT. Subsection 4 of section 19-02.1-15 of the North Dakota Century Code is amended and reenacted as follows:

4. A drug which is subject to subsection 1 must be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", "Rx Only", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which subsection 1 does not apply must be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

SECTION 3. AMENDMENT. Subdivision a of subsection 23 of section 19-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

- 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 ~~in this state~~.

SECTION 4. AMENDMENT. Subsection 6 of section 19-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

6. Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - a. Flunitrazepam.
 - b. Gamma-hydroxybutyric acid.
 - c. Mecloqualone.
 - ~~e.~~ d. Methaqualone.

SECTION 5. 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. Chlorhexadol.

- e. 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. Gamma-hydroxybutyric acid in a United States food and drug administration-approved drug product.
- g. Glutethimide.
- h. Ketamine.
- ~~f.~~ i. Lysergic acid.
- ~~g.~~ j. Lysergic acid amide.
- ~~h.~~ k. Methyprylon.
- ~~i.~~ l. Sulfondiethylmethane.
- ~~j.~~ m. Sulfonethylmethane.
- ~~k.~~ n. Sulfonmethane.
- ~~l.~~ o. 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 6. AMENDMENT. Subsections 4 and 6 of section 19-03.1-11 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing 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. Estazolam.
- q. Ethchlorvynol.
- r. Ethinamate.
- s. Ethyl loflazepate.
- t. Fludiazepam.
- u. Flurazepam.
- v. Halazepam.
- w. Haloxazolam.
- x. Ketazolam.
- y. Loprazolam.
- z. Lorazepam.
- aa. Lormetazepam.
- bb. Mebutamate.
- cc. Medazepam.
- dd. Meprobamate.
- ee. Methohexital.
- ff. Methylphenobarbital (also known as mephobarbital).
- gg. Midazolam.
- hh. Nimetazepam.
- ii. Nitrazepam.
- jj. Nordiazepam.

- kk. Oxazepam.
 - ll. Oxazolam.
 - mm. Paraldehyde.
 - nn. Petrichloral.
 - oo. Phenobarbital.
 - pp. Pinazepam.
 - qq. Prazepam.
 - rr. Quazepam.
 - ss. Sibutramine.
 - tt. Temazepam.
 - uu. Tetrazepam.
 - vv. Triazolam.
 - ww. Zaleplon.
 - xx. Zolpidem.
6. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
- a. Cathine.
 - b. Diethylpropion.
 - c. Fencamfamin.
 - d. Fenproporex.
 - e. Mazindol.
 - f. Mefenorex.
 - g. Modafinil.
 - h. Pemoline (including organometallic complexes and chelates thereof).
 - ~~h~~ i. Phentermine.
 - ~~h~~ j. Pipradrol.
 - ~~j~~ k. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

SECTION 7. AMENDMENT. Subsection 1 of section 19-03.1-22 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature.

¹¹² **SECTION 8. AMENDMENT.** Subsection 26 of section 43-15-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26. "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with ~~either~~ one of the following:
 - a. "Caution: Federal law prohibits dispensing without prescription"; ~~or~~
 - b. "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or
 - c. "Rx only";

or a drug which is required by any applicable federal or North Dakota law or ~~regulation~~ rule to be dispensed on prescription only or is restricted to use by practitioners only.

Approved March 12, 2001
Filed March 12, 2001

¹¹² Section 43-15-01 was also amended by section 1 of Senate Bill No. 2350, chapter 375.

CHAPTER 214

SENATE BILL NO. 2444

(Senators G. Nelson, Lyson, C. Nelson)
(Representatives Carlisle, DeKrey, Mahoney)

DRUG LAW VIOLATIONS

AN ACT to create and enact section 19-03.1-22.1, a new subsection to section 19-03.1-37, and chapter 19-03.4 of the North Dakota Century Code, relating to volatile chemicals and drug paraphernalia; to amend and reenact section 12.1-32-09, subsection 1 of section 15.1-24-05, subsection 7 of section 19-03.1-23, section 19-03.1-23.2, subsection 6 of section 19-03.1-36, and subsection 4 of section 19-03.1-37 of the North Dakota Century Code, relating to drug offenses and enhanced sentencing; to repeal section 12.1-31-06 and chapter 12.1-31.1 of the North Dakota Century Code, relating to volatile chemicals and 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 12.1-32-09 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09. Dangerous special offenders - Habitual offenders - Extended sentences - Procedure.

1. A court may sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender in accordance with ~~the provisions of~~ this section upon a finding of any one or more of the following:
 - a. The convicted offender is a dangerous, mentally abnormal person. ~~The court may not make such a finding unless the presentence report, including a psychiatric examination, concludes that the offender's whose~~ conduct has been characterized by persistent aggressive behavior; and ~~that such the~~ behavior makes the offender a serious danger to other persons.
 - b. The convicted offender is a professional criminal. ~~The court may not make such a finding unless the offender is an adult and the presentence report shows that the offender who~~ has substantial income or resources derived from criminal activity.
 - c. The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class C or above committed at different times when the offender was an adult. For the purposes of this subdivision, a felony conviction in another state or under the laws of the United States ~~shall be~~ is considered a felony of class C or above if it is punishable by a maximum term of imprisonment of five years or more.

- d. The offender was convicted of an offense ~~which~~ that seriously endangered the life of another person and the offender had previously been convicted of a similar offense.
- e. The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

2. The extended sentence may be imposed in the following manner:
 - a. If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.
 - b. If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.
 - c. If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.
3. Whenever an attorney charged with the prosecution of a defendant in a court of this state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special offender or a habitual offender, the attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender or a habitual offender who upon conviction for the felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why the attorney believes the defendant to be a dangerous special offender or a habitual offender. In no case may the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender or a habitual offender be disclosed to the jury before a verdict. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, ~~it~~ the court may order the notice sealed and the notice ~~shall~~ is not ~~be~~ subject to subpoena or public inspection during the pendency of ~~such~~ the criminal matter, except on order of the court, but ~~shall be~~ is

subject to inspection by the defendant alleged to be a dangerous special offender or a habitual offender and the offender's counsel.

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, ~~by the court sitting without a jury.~~ in accordance with this subsection as follows:
 - a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges that the defendant is a dangerous special offender under subdivision a, b, d, or e of subsection 1. The jury, or the court if a jury is waived, must find that the defendant is a dangerous special offender under one or more of these subdivisions by proof beyond a reasonable doubt. However, in the case of a notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if a jury is waived, may make a special finding of proof of this subdivision without an additional hearing subsequent to a verdict or finding of guilt.
 - b. By the court if the notice alleges that the defendant is a habitual offender under subdivision c of subsection 1. The court must find that the defendant is a habitual offender by a preponderance of the evidence.
5. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently ~~prior to~~ before the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion ~~which~~ that might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment. ~~If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon the jury or the court finds, after hearing, one or more of the grounds set forth in subsection 1,~~ that the defendant is a dangerous special offender or a habitual offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2. The court shall place in the record its findings including an identification of the information relied upon in making such findings and its reasons for the sentence imposed.

SECTION 2. AMENDMENT. Subsection 1 of section 15.1-24-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, ~~19-03.1-23~~, 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.

SECTION 3. Section 19-03.1-22.1 of the North Dakota Century Code is created and enacted as follows:

19-03.1-22.1. Volatile chemicals - Inhalation of vapors prohibited - Definitions - Penalty. An individual is guilty of a class B misdemeanor if that individual intentionally inhales the vapors of a volatile chemical in a manner designed to affect the individual's central nervous system; to create or induce a condition of intoxication, hallucination, or elation; or to distort, disturb, or change the individual's eyesight, thinking processes, balance, or coordination. This section does not apply to inhalations specifically prescribed for medical, dental, or optometric treatment purposes or to controlled substances described in this chapter. For the purposes of this section, "volatile chemical" includes the following chemicals or their isomers:

1. Acetone.
2. Aliphatic hydrocarbons.
3. Amyl nitrite.
4. Butane.
5. Butyl nitrite.
6. Carbon tetrachloride.
7. Chlorinated hydrocarbons.
8. Chlorofluorocarbons.
9. Chloroform.
10. Cyclohexane.
11. Diethyl ether.
12. Ethyl acetate.
13. Fluorocarbon.
14. Glycol ether inter solvent.
15. Glycol ether solvent.
16. Hexane.

17. Ketone solvent.
18. Methanol.
19. Methyl cellosolve acetate.
20. Methyl ethyl ketone.
21. Methyl isobutyl ketone.
22. Nitrous oxide.
23. Petroleum distillate.
24. Toluene.
25. Trichloroethane.
26. Trichloroethylene.
27. Xylol or xylene.

¹¹³ **SECTION 4. AMENDMENT.** Subsection 7 of section 19-03.1-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. A person who violates this chapter or chapter 19-03.4 must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a felony violation of this chapter or chapter 19-03.4, and may be submitted before or after the imposing of punishment for a misdemeanor violation of this chapter or chapter 19-03.4.

¹¹⁴ **SECTION 5. AMENDMENT.** Section 19-03.1-23.2 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.2. Mandatory terms of imprisonment - Deferred or suspended sentence limited. Whenever a mandatory term of imprisonment is prescribed as a penalty for violation of this chapter, the court may not defer imposition of sentence, nor may the court suspend any part of a specified mandatory term, either at the time of or after the imposition of the sentence, unless the court first finds that the offense was the defendant's first violation of this chapter, chapter 19-03.2, or chapter 19-03.4 and that extenuating or mitigating circumstances exist which justify a suspension. The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite these circumstances in the sentence or order suspending part of the sentence.

¹¹³ Section 19-03.1-23 was also amended by section 1 of House Bill No. 1364, chapter 215.

¹¹⁴ Section 19-03.1-23.2 was also amended by section 2 of House Bill No. 1364, chapter 215.

SECTION 6. AMENDMENT. Subsection 6 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

6. Controlled substances as defined in this chapter and imitation controlled substances as defined in chapter 19-03.2 that are possessed, transferred, sold, or offered for sale in violation of this chapter and drug paraphernalia as defined in chapter ~~42.1-31.4~~ 19-03.4 are contraband and must be seized and summarily forfeited to the state. Controlled substances as defined in this chapter and imitation controlled substances as defined in chapter 19-03.2, which are seized or come into the possession of the state and drug paraphernalia as defined in chapter ~~42.1-31.4~~ 19-03.4, the owners of which are unknown, are contraband and must be summarily forfeited to the state.

SECTION 7. AMENDMENT. Subsection 4 of section 19-03.1-37 of the North Dakota Century Code is amended and reenacted as follows:

4. In all prosecutions under this chapter, chapter 19-03.2, or chapter ~~42.1-31.4~~ 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, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.

SECTION 8. A new subsection to section 19-03.1-37 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 9. Chapter 19-03.4 of the North Dakota Century Code is created and enacted as follows:

19-03.4-01. Definition - Drug paraphernalia. In this chapter, unless the context otherwise requires, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of chapter 19-03.1. The term includes:

1. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
2. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.

3. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
4. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances.
5. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
6. Diluents and adulterants, including quinine hydrochloride, mannitol, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
7. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.
8. Blenders, bowls, containers, spoons, grinders, and mixing devices used, intended for use, or designed for use in compounding, manufacturing, producing, processing, or preparing controlled substances.
9. Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
10. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances or products or materials used or intended for use in manufacturing, producing, processing, or preparing controlled substances.
11. Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
12. Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body including:
 - a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls.
 - b. Water pipes.
 - c. Carburetion tubes and devices.
 - d. Smoking and carburetion masks.
 - e. Objects, sometimes commonly referred to as roach clips, used to hold burning material, for example, a marijuana cigarette, that has become too small or too short to be held in the hand.
 - f. Miniature cocaine spoons and cocaine vials.

- g. Chamber pipes.
 - h. Carburetor pipes.
 - i. Electric pipes.
 - j. Air-driven pipes.
 - k. Chillums.
 - l. Bongs.
 - m. Ice pipes or chillers.
13. Ingredients or components to be used or intended or designed to be used in manufacturing, producing, processing, preparing, testing, or analyzing, whether or not otherwise lawfully obtained, including anhydrous ammonia, nonprescription medications, or lawfully dispensed controlled substances.

19-03.4-02. Drug paraphernalia - Guidelines. In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors:

- 1. Statements by an owner or by anyone in control of the object concerning its use.
- 2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance.
- 3. The proximity of the object, in time and space, to a direct violation of chapter 19-03.1.
- 4. The proximity of the object to controlled substances.
- 5. The existence of any residue of controlled substances on the object.
- 6. Direct or circumstantial evidence of the intent of an owner, or of any person in control of the object, to deliver the object to another person whom the owner or person in control of the object knows, or should reasonably know, intends to use the object to facilitate a violation of chapter 19-03.1. The innocence of an owner, or of any person in control of the object, as to a direct violation of chapter 19-03.1 may not prevent a finding that the object is intended or designed for use as drug paraphernalia.
- 7. Instructions, oral or written, provided with the object concerning the object's use.
- 8. Descriptive materials accompanying the object which explain or depict the object's use.
- 9. National and local advertising concerning the object's use.
- 10. The manner in which the object is displayed for sale.

11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, for example, a licensed distributor or dealer of tobacco products.
12. Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
13. The existence and scope of legitimate uses for the object in the community.
14. Expert testimony concerning the object's use.
15. The actual or constructive possession by the owner or by a person in control of the object or the presence in a vehicle or structure where the object is located of written instructions, directions, or recipes to be used, or intended or designed to be used, in manufacturing, producing, processing, preparing, testing, or analyzing a controlled substance.

19-03.4-03. Unlawful possession of drug paraphernalia. A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.

19-03.4-04. Unlawful manufacture or delivery of drug paraphernalia. A person may not deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will be used to plant, propogate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this section is guilty of a class C felony if the drug paraphernalia will be used to manufacture, compound, convert, produce, process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. Otherwise, a violation of this section is a class A misdemeanor.

19-03.4-05. Unlawful delivery of drug paraphernalia to a minor. A person eighteen years of age or over may not deliver drug paraphernalia, in violation of this chapter, to a person under eighteen years of age who is at least three years the deliverer's junior. Any person violating this section is guilty of a class C felony.

19-03.4-06. Unlawful advertisement of drug paraphernalia. A person may not place an advertisement in any newspaper, magazine, handbill, or other publication if that person knows or should reasonably know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person violating this section is guilty of a class A misdemeanor.

SECTION 10. REPEAL. Section 12.1-31-06 and chapter 12.1-31.1 of the North Dakota Century Code are repealed.

SECTION 11. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 12, 2001

Filed April 12, 2001

CHAPTER 215

HOUSE BILL NO. 1364

(Representatives Wald, Boucher, Haas)
(Senators Lyson, Robinson, Wardner)

DRUG VIOLATION MANDATORY IMPRISONMENT

AN ACT to amend and reenact sections 19-03.1-23 and 19-03.1-23.2 of the North Dakota Century Code, relating to mandatory terms of imprisonment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁵ **SECTION 1. AMENDMENT.** Section 19-03.1-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class A felony and must be sentenced:
 - (1) ~~For a first offense, to imprisonment for at least a year and a day.~~
 - ~~(2)~~ For a second offense, to imprisonment for at least five years.
 - ~~(3)~~ (2) For a third or subsequent offense, to imprisonment for twenty years.
 - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
 - (1) ~~For a first offense, to imprisonment for at least eight months.~~

¹¹⁵ Section 19-03.1-23 was also amended by section 4 of Senate Bill No. 2444, chapter 214.

under the age of eighteen, the defendant must be sentenced to imprisonment for at least ~~four~~ eight years. ~~For a second or subsequent offense, 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.

4. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:
 - a. ~~For the first offense, to imprisonment for at least four years.~~
 - b. For a second or subsequent offense, to imprisonment for at least five years.
- e. b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
6. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of 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 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.
7. A person who violates this chapter must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The

evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a violation of this chapter.

8. Notwithstanding section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.

¹¹⁶ **SECTION 2. AMENDMENT.** Section 19-03.1-23.2 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.2. Mandatory terms of imprisonment - Deferred or suspended sentence limited. Whenever a mandatory term of imprisonment is prescribed as a penalty for violation of this chapter, the court may not defer imposition of sentence, nor may the court suspend any part of a specified mandatory term, either at the time of or after the imposition of the sentence, ~~unless the court first finds that the offense was the defendant's first violation of this chapter and that extenuating or mitigating circumstances exist which justify a suspension.~~ The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite these circumstances in the sentence or order suspending part of the sentence.

Approved March 19, 2001
Filed March 19, 2001

¹¹⁶ Section 19-03.1-23.2 was also amended by section 5 of Senate Bill No. 2444, chapter 214.

CHAPTER 216

HOUSE BILL NO. 1367 (Representatives Keiser, Mahoney)

DRUG SENTENCING

AN ACT to amend and reenact section 19-03.1-23.1 of the North Dakota Century Code, relating to sentencing for drug offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23.1. Increased penalties for aggravating factors in drug offenses.

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 school, or a public or private college or university;
 - b. The defendant was at least ~~eighteen~~ 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) ~~One hundred~~ Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
 - (2) ~~Five hundred~~ 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; ~~or~~
- (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidiny] 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-piperidiny] 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.

2. The offense is:

- a. A class AA felony if the violation of section 19-03.1-23 is designated as a class A felony.
- b. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
- c. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
- d. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

CHAPTER 217

SENATE BILL NO. 2445

(Senators G. Nelson, Lyson, C. Nelson)
(Representatives Carlisle, DeKrey, Mahoney)

CONTROLLED SUBSTANCE STATUS AND TRENDS REPORT

AN ACT to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to a comprehensive status and trends report regarding unlawful controlled substance use and abuse treatment and enforcement efforts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-03.1 of the North Dakota Century Code is created and enacted as follows:

Comprehensive status and trends report. On or before July first of each even-numbered year, the attorney general, or designee of the attorney general, shall report the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state. This report must be made to an interim legislative committee and must include the following information:

1. The state department of health shall provide the results of the most recent survey of the state's young people regarding drug usage. This survey must include information regarding the accessibility of gateway and other illicit drugs, the prevalence of gateway and other illicit drugs in schools or on school property, and the types and frequency of gateway and other illicit drugs used by young people.
2. The state crime laboratory shall provide a report that includes the type of each controlled substance tested and the number of times tests were run for each controlled substance.
3. The department of human services shall provide a current status of the number of people who were treated in the state. The report must include information about the variety of drugs, legal and illegal, for which people were treated.
4. The department of corrections and rehabilitation shall provide the current status of the number of people incarcerated or on probation in the state correctional system for violation of title 19. This report must specify the average length of sentence including probation, average length of incarceration ordered by a court to be served, and average actual time incarcerated for drug offenders sentenced to the custody of the department. The report also must identify the number of people referred to treatment and treated as a condition of sentencing, probation, or parole.

5. The attorney general shall provide the current status of the number of arrests for violation of title 19 and the current enforcement efforts to combat unlawful drug trafficking and usage.

Approved March 22, 2001
Filed March 22, 2001

CHAPTER 218

SENATE BILL NO. 2111

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

COMMERCIAL FEED ADULTERATION

AN ACT to amend and reenact section 19-13.1-07 of the North Dakota Century Code, relating to the adulteration of commercial feeds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-13.1-07 of the North Dakota Century Code is amended and reenacted as follows:

19-13.1-07. Adulteration. No person may distribute an adulterated feed. A commercial feed or customer-formula feed is adulterated:

1. a. If it bears any poisonous or deleterious substance that may render it injurious to health. If the substance is not an added substance, the commercial feed is not considered adulterated if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health;
- b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance that is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 75-717; 52 Stat. 1049; 21 U.S.C. 346] other than one which is a pesticide chemical in or on a raw agricultural commodity or a food additive;
- c. If it is, or it bears or contains, any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 85-929; 72 Stat. ~~4788~~ 1785; 21 U.S.C. ~~3484~~ 348];
- d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 85-791; 68 Stat. 511; 21 U.S.C. 346a]. Except that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 85-791; 68 Stat. 511; 21 U.S.C. 346a] and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on the processed feed may not be deemed unsafe if the residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide

- residue in the edible product of the animal, which is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 85-791; 68 Stat. 511; 21 U.S.C. 346a];
- e. If it is, or it bears or contains, any color additive that is unsafe within the meaning of section ~~706~~ 721 of the Federal Food, Drug, and Cosmetic Act as amended [~~Pub. L. 75-717; 52 Stat. 4058; 24 U.S.C. 376~~ Pub. L. 102-571; 106 Stat. 4498; 21 U.S.C. 379e]; or
 - f. If it is, or it bears or contains, any new animal drug which is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act as amended [Pub. L. 90-399; 82 Stat. 343; 21 U.S.C. 360b];
2. If any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor;
 3. If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling;
 4. If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is stated on the label;
 5. If it contains viable weed seeds in amounts exceeding the limits which the commissioner shall establish by rule;
 6. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules adopted by the commissioner to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess;
 7. If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for feed;
 8. If it has been prepared, packed, or held under unsanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;
 9. If it is, in whole or in part, the product of a diseased animal or of an animal that has died otherwise than by slaughter which is unsafe within the meaning of section 402 (a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 75-717; 52 Stat. 1046; 21 U.S.C. 342];
 10. If its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;
or

11. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [Pub. L. 85-929; 72 Stat. 1785; 21 U.S.C. 348].

Approved March 14, 2001

Filed March 15, 2001

GAME, FISH, PREDATORS, AND BOATING

CHAPTER 219

SENATE BILL NO. 2353

(Senator Christmann)
(Representatives Carlson, Kasper)

HUNTING BY HANDICAPPED PERSONS

AN ACT to amend and reenact subsection 11 of section 20.1-02-05 of the North Dakota Century Code, relating to hunting by handicapped persons on lands controlled by the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁷ **SECTION 1. AMENDMENT.** Subsection 11 of section 20.1-02-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. Issue, ~~at the director's discretion,~~ special permits to shoot wildlife from a stationary motor vehicle upon application from individuals who are physically unable to walk for purposes of hunting or taking wildlife 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, on to any land for the purposes of hunting wildlife, except that neither any other passenger within the vehicle nor the driver, if someone other than the permittee, 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 ~~tenant~~ lessee to hunt on the land in the manner provided in this title.

Approved March 16, 2001
Filed March 16, 2001

¹¹⁷ Section 20.1-02-05 was also amended by section 1 of House Bill No. 1070, chapter 221, and section 1 of Senate Bill No. 2449, chapter 220.

CHAPTER 220

SENATE BILL NO. 2449

(Senators Mutch, Lyson, Stenehjem)
(Representatives Carlisle, Carlson, Porter)

GUIDE AND OUTFITTER RESTRICTIONS

AN ACT to create and enact a new section to chapter 20.1-03 of the North Dakota Century Code, relating to restrictions on guides and outfitters; and to amend and reenact subsection 17 of section 20.1-02-05 of the North Dakota Century Code, relating to the powers of the director of the game and fish department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁸ **SECTION 1. AMENDMENT.** Subsection 17 of section 20.1-02-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

17. Subject to ~~the provisions of~~ 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 ~~any~~ a person who violates the rules or fails to provide the records and reports. ~~Any person who acts as a guide or outfitter without a license is guilty of a class B misdemeanor.~~

SECTION 2. A new section to chapter 20.1-03 of the North Dakota Century Code is created and enacted as follows:

Guides and outfitters - Rules - Restrictions. An individual may not:

1. 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

¹¹⁸ Section 20.1-02-05 was also amended by section 1 of House Bill No. 1070, chapter 221, and section 1 of Senate Bill No. 2353, chapter 219.

5. Willfully and substantially misrepresent that person's facilities, prices, equipment, services, or hunting or fishing opportunities as a guide or outfitter.

Approved April 23, 2001

Filed April 23, 2001

CHAPTER 221

HOUSE BILL NO. 1070

(Natural Resources Committee)

(At the request of the Game and Fish Department)

HUNTER EDUCATION GRATIS LICENSES

AN ACT to create and enact a new subsection to section 20.1-02-05 and a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to gratis hunting licenses for certified hunter education volunteer instructors; and to amend and reenact subsection 18 of section 20.1-03-12 of the North Dakota Century Code, relating to certificate fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁹ **SECTION 1.** A new subsection to section 20.1-02-05 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Issue, as a means of rewarding dedication to teaching firearm hunter safety, complimentary lifetime resident certificates provided under section 3 of this Act 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.

¹²⁰ **SECTION 2. AMENDMENT.** Subsection 18 of section 20.1-03-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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. ~~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.~~

¹¹⁹ Section 20.1-02-05 was also amended by section 1 of Senate Bill No. 2353, chapter 219, and section 1 of Senate Bill No. 2449, chapter 220.

¹²⁰ Section 20.1-03-12 was also amended by section 3 of House Bill No. 1070, chapter 221, and section 2 of House Bill No. 1274, chapter 224.

¹²¹ **SECTION 3.** A new subsection to section 20.1-03-12 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

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.

Approved March 6, 2001
Filed March 6, 2001

¹²¹ Section 20.1-03-12 was also amended by section 2 of House Bill No. 1070, chapter 221, and section 2 of House Bill No. 1274, chapter 224.

CHAPTER 222**SENATE BILL NO. 2025**
(Legislative Council)
(Agriculture Committee)**DEERPROOF HAY YARD PROGRAM**

AN ACT to create and enact a new section to chapter 20.1-02 of the North Dakota Century Code, relating to the deerproof hay yard program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-02 of the North Dakota Century Code is created and enacted as follows:

Deerproof hay yard program. Within legislative appropriations, the director shall provide for a deerproof hay yard program. The deerproof hay yard program must provide materials and supplies at no cost to landowners for the establishment of deerproof hay yards to protect hay or feed on private property with deer depredation problems. The director may not discriminate against or penalize any landowner applying for or participating in the deerproof hay yard program on the basis of that landowner allowing hunting in exchange for compensation.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 223

SENATE BILL NO. 2427

(Senators Stenehjem, Fischer, Freborg)
(Representatives Carlson, Drovdal, Porter)

DEER HUNTING BY HANDICAPPED PERSONS

AN ACT to amend and reenact subsection 6 of section 20.1-03-11 of the North Dakota Century Code, relating to the hunting of deer by handicapped persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 20.1-03-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. ~~Any~~ A person who is ~~permanently~~ unable to ~~walk for purposes of hunting or taking wildlife~~ step from a vehicle without aid of a wheelchair, crutch, brace, or other mechanical support or prosthetic device or who is unable to walk any distance because of a permanent lung, heart, or other internal disease that requires the person to use supplemental oxygen to assist breathing and who receives or obtains, whether issued by lottery or otherwise, a license to hunt deer, is entitled to convert one license to take any sex or species of deer in the unit or subunit for which the license is issued. Notwithstanding any other law or any provision contained in the governor's proclamation concerning the hunting of deer, ~~any~~ a person who is ~~permanently~~ unable to ~~walk for purposes of hunting or taking wildlife~~ step from a vehicle without aid of a wheelchair, crutch, brace, or other mechanical support or prosthetic device or who is unable to walk any distance because of a permanent lung, heart, or other internal disease that requires the person to use supplemental oxygen to assist breathing is entitled to apply for a license to hunt deer regardless of whether that person received a license to hunt deer in any prior year.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 224

HOUSE BILL NO. 1274 (Representatives Kretschmar, Porter) (Senators Erbele, Traynor)

NONRESIDENT GUIDE SERVICES

AN ACT to amend and reenact section 20.1-03-11.2 and subsection 42 of section 20.1-03-12 of the North Dakota Century Code, relating to guide and outfitting services provided to nonresidents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-11.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-11.2. Guides Certified guides and 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 outfitters licensed in this state. A certified guide or outfitter may not purchase or obtain more than five white-tailed deer licenses under this section in any one year. A certified guide or outfitter shall pay the fee required for a white-tailed deer license sold to guides or outfitters and provided by them to nonresidents for each license purchased under this section. A certified guide or outfitter may provide to nonresidents, for compensation, big game guiding and outfitting services and one white-tailed deer license per nonresident as provided in this section to hunt white-tailed deer in the manner, at the places, and during the times the governor prescribes by proclamation.

¹²² **SECTION 2. AMENDMENT.** Subsection 42 of section 20.1-03-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

42. For a white-tailed deer license sold to certified guides or outfitters and provided by them to nonresidents, two hundred fifty dollars.

Approved April 3, 2001
Filed April 3, 2001

¹²² Section 20.1-03-12 was also amended by section 2 of House Bill No. 1070, chapter 221, and section 3 of House Bill No. 1070, chapter 221.

CHAPTER 225

HOUSE BILL NO. 1238

(Representatives Nottestad, Brekke, Carlson)
(Senator Espegard)

NONRESIDENT LICENSE VENDORS

AN ACT to amend and reenact section 20.1-03-17 of the North Dakota Century Code, relating to use of out-of-state vendors by county auditors to sell fishing licenses and appointment of agents to sell game and fish licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-03-17. Issuance of licenses - Who to issue - County auditor may appoint agents to receive service fees - Disposition of proceeds - Continuing appropriation. All hunting, fur-bearer, fishing, and taxidermists' licenses must be issued by county auditors, the director, deputy director, and bonded game wardens. The county auditors, deputy director, and each bonded game warden shall send the director all license fees. For each license the county auditor issues, the county auditor shall collect the authorized charges and record them in the county auditor's record of cash received. ~~The~~ Unless the county auditor and the board of county commissioners execute a written agreement providing for the disposition of compensation for the issuance of licenses, the county auditor is entitled to be reimbursed, as compensation, twenty-five cents for the issuance of each of the first one thousand resident hunting, fishing, or fur-bearer licenses issued each year and fifteen cents for the issuance of each resident hunting, fishing, or fur-bearer license issued in excess of the first one thousand licenses issued each year; one dollar for the issuance of each nonresident hunting or fur-bearer license; twenty-five cents for the issuance of each nonresident fishing license; and ten cents for the issuance of each nonresident general game license. The compensation due ~~the county auditor~~ for the issuance of licenses is hereby appropriated as a standing and continuing appropriation from the game and fish fund for the purposes of this section.

The county auditor may appoint agents to distribute hunting and fishing licenses or stamps. ~~However, a~~ A county auditor may not provide hunting or fishing licenses to agents located outside this state, but the director may provide licenses to agents located outside this state if there are no agents located a reasonable distance within this state where nonresidents may obtain licenses. The director and county auditor may require agents to show evidence of adequate financial security before the agents are appointed. Adequate financial security may be evidenced by a letter of credit, cash deposit, or bond. Agents may be bonded through the state bonding fund. The agents may charge purchasers a service fee of fifty cents for each license. Service fees may be retained by the agent. The agent shall return the remainder of the license fees must be returned to the county auditor, for deposit with the county treasurer, or to the director if the agent is appointed by the director, at least once each month, and not later than three days after the close of the month. Notwithstanding section 26.1-21-11, if a claim against the state bonding fund is not filed within sixty days of the expiration of the reporting period provided in this section, the claim is waived. Deposits are to be accompanied by a report showing the amounts received from the sale of each type of license, the amount retained, and the

net amounts deposited. The county treasurer shall credit the fees so deposited to a separate account and shall hold the fees, subject to warrant for payment thereof drawn by the county auditor in favor of the director. The director shall deposit all license or stamp fees received with the state treasurer to be credited to the game and fish fund.

Approved March 27, 2001

Filed March 27, 2001

CHAPTER 226

HOUSE BILL NO. 1356

(Representatives Wrangham, DeKrey, Hanson)
(Senators Christmann, Freborg)

SPEARFISHING

AN ACT to amend and reenact section 20.1-06-08 of the North Dakota Century Code, relating to the governor's proclamation concerning spearfishing from dark houses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-06-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-06-08. Spearfishing Governor's proclamation concerning spearfishing from dark houses. ~~Fish may be taken~~ The governor shall provide by proclamation for the taking of fish by spearing through the ice from dark houses. Spearfishing seasons, and the species which that may be taken, must be by established methods provided for by in the governor's order or proclamation. A nonresident may spearfish in this state if the nonresident's state of residence provides the same privilege for residents of this state. The fishing license provided for in chapter 20.1-03 includes the privilege of ~~such~~ spearfishing.

Approved March 20, 2001

Filed March 21, 2001

CHAPTER 227**SENATE BILL NO. 2345**

(Senator Trenbeath)
(Representative Tieman)

MUZZLELOADING DEER HUNTING SEASON

AN ACT to amend and reenact section 20.1-08-04.5 of the North Dakota Century Code, relating to hunting deer with muzzleloading firearms.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-08-04.5 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.5. Governor's proclamation concerning the hunting of deer with muzzleloading firearms. The governor shall by proclamation provide for a ~~nine and one-half consecutive day~~ muzzleloading firearm season following the regular deer hunting season to hunt deer with muzzleloading firearms in the manner, number, places, and times as the governor prescribes. Licenses to hunt deer with muzzleloading firearms must be issued by the director by lottery as prescribed by the director. The director shall issue two percent of the total white-tailed deer gun licenses available each year to hunters with muzzleloading firearms. Of the two percent, one-half of the licenses issued may be for antlered white-tailed deer.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 228

HOUSE BILL NO. 1075

(Natural Resources Committee)

(At the request of the Board of University and School Lands)

GAME AND FISH REFUGE AND MANAGEMENT AREAS

AN ACT to amend and reenact sections 20.1-11-04 and 20.1-11-05 of the North Dakota Century Code, relating to the authority of the director of the game and fish department to establish game refuges and game and fish management areas on public land.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-11-04 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-04. Game refuges on public lands may be established by director - Duration of public land refuges. The director may establish state game refuges on any unsold public lands of this state with the written consent of the entity responsible for the management of those lands. The refuge continues to exist until canceled by the director or the land management entity, or until the land on which it is located is sold to a private person.

SECTION 2. AMENDMENT. Section 20.1-11-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-11-05. Establishment of state game or fish management areas. The director may establish game or fish management areas upon any state-owned lands for the use and benefit of the game and fish department with the written consent of the entity responsible for the management of any state-owned lands, or upon any publicly or privately owned land leased or given by license to the game and fish department for hunting and fishing purposes. These game or fish management areas may be opened for hunting, fishing, or trapping under chapter 20.1-08. The director may adopt rules concerning the use of game or fish management areas pursuant to chapter 28-32.

Approved March 19, 2001

Filed March 19, 2001

CHAPTER 229**SENATE BILL NO. 2051**
(Senators Wardner, Lyson)
(Representatives Clark, Drovdal)**MOTORBOAT SALES OR USE TAX PAYMENT**

AN ACT to create and enact a new section to chapter 20.1-13 of the North Dakota Century Code, relating to evidence of sales or use tax payment or exemption for motorboat licensing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-13 of the North Dakota Century Code is created and enacted as follows:

Evidence of tax payment or exemption. With an application for a motorboat number and license under section 20.1-13-03 by an applicant in whose name the motorboat has not previously been licensed, the applicant shall present proof of payment of sales or use tax that was due upon acquisition or bringing the motorboat into this state for storage or use in this state or shall present proof of exemption from sales or use taxes. Credit for taxes paid by the applicant upon acquisition of the motorboat in another state must be allowed as provided in section 57-40.2-11 if proof of that payment is presented. To establish that the motorboat was acquired through a casual sale and qualifies for exempt status, the applicant shall present a receipt for the sale signed by the seller and showing the seller's name and address. The department may waive the furnishing of a signed receipt for a casual sale if the applicant shows good cause why a receipt is unavailable and signs a statement showing the name and address of the seller and stating that to the best of the applicant's knowledge the seller is not in the business of selling boats.

Approved March 12, 2001
Filed March 12, 2001

CHAPTER 230

SENATE BILL NO. 2178

(Senators Lyson, O'Connell, Stenehjem)
(Representatives Carlisle, Drovdal, Rennerfeldt)

INTERSTATE WILDLIFE VIOLATOR COMPACT

AN ACT to enter the interstate wildlife violator compact; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Interstate wildlife violator compact. The interstate wildlife violator compact is entered with all states legally joining the compact, in the form substantially as follows:

ARTICLE 1. FINDINGS, DECLARATION OF POLICY, AND PURPOSE

1. The participating states find that the following provisions apply:
 - a. Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.
 - b. The protection of the wildlife resources of a state is materially affected by the degree of compliance with state statutes, laws, ordinances, regulations, and administrative rules relating to the management of such resources.
 - c. The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of such natural resources.
 - d. Wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances, regulations, and administrative rules of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.
 - e. Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.
 - f. The mobility of many wildlife law violators necessitates the maintenance of channels of communication among the various states.
 - g. In most instances, a person who is cited for a wildlife violation in a state other than that person's own state:
 - (1) Is required to post collateral or a bond to secure appearance for a trial at a later date;
 - (2) Is taken into custody until the collateral or bond is posted; or

- (3) Is taken directly to court for an immediate appearance.
 - h. The purpose of the enforcement practices set forth in subdivision g is to ensure compliance with the terms of a wildlife citation by the cited person who, if permitted to proceed after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.
 - i. In most instances, a person receiving a wildlife citation in that person's home state is permitted to accept the citation from the officer at the scene of the violation and immediately proceed after agreeing or being instructed to comply with the terms of the citation.
 - j. The practices described in subdivision g cause unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay a fine and is thus compelled to remain in custody until some alternative arrangement is made.
 - k. The enforcement practices described in subdivision g consume an undue amount of law enforcement time.
2. It is the policy of the participating states to:
 - a. Promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to management of wildlife resources in their respective states;
 - b. Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a participating state and may treat such suspension as if it had occurred in their state;
 - c. Allow a violator, except as provided in subsection 2 of article 3, to accept a wildlife citation and proceed without delay, whether or not a resident of the state in which the citation was issued, provided that the violator's home state is party to this compact;
 - d. Report to the appropriate participating state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state;
 - e. Allow the home state to recognize and treat convictions recorded against its residents, which convictions occurred in a participating state, as though they occurred in the home state;
 - f. Extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one participating state to a resident of another participating state;
 - g. Maximize effective use of law enforcement personnel and information; and
 - h. Assist court systems in the efficient disposition of wildlife violations.

3. The purpose of this compact is to:
 - a. Provide a means through which participating states may join in a reciprocal program to effectuate the policies enumerated in subsection 2 in a uniform and orderly manner; and
 - b. Provide for the fair and impartial treatment of wildlife violators operating within participating states in recognition of the violator's right to due process and the sovereign status of a participating state.

ARTICLE 2. DEFINITIONS

As used in this compact and sections 2 through 5 of this Act, unless the context requires otherwise, the following definitions apply:

1. "Citation" means any summons, complaint, summons and complaint, ticket, penalty assessment, or other official document that is issued to a person by a wildlife officer or other peace officer for a wildlife violation and that contains an order requiring the person to respond.
2. "Collateral" means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.
3. "Compliance" with respect to a citation means the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs, and surcharges, if any.
4. "Conviction" means a conviction, including any court conviction, for any offense that is related to the preservation, protection, management, or restoration of wildlife and that is prohibited by state statute, law, regulation, ordinance, or administrative rule. The term also includes the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere, and the imposition of a deferred or suspended sentence by the court.
5. "Court" means a court of law, including magistrate's court and the justice of the peace court.
6. "Home state" means the state of primary residence of a person.
7. "Issuing state" means the participating state which issues a wildlife citation to the violator.
8. "License" means any license, permit, or other public document that conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a participating state.
9. "Licensing authority" means the department or division within each participating state that is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

10. "Participating state" means any state that enacts legislation to become a member of this wildlife compact.
11. "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation.
12. "State" means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the provinces of Canada, and other countries.
13. "Suspension" means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.
14. "Terms of the citation" means those conditions and options expressly stated in the citation.
15. "Wildlife" means all species of animals including mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a participating state. Species included in the definition of "wildlife" for purposes of this compact are based on state or local law.
16. "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.
17. "Wildlife officer" means any individual authorized by a participating state to issue a citation for a wildlife violation.
18. "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

ARTICLE 3. PROCEDURES FOR ISSUING STATE

1. When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and may not require such person to post collateral to secure appearance, subject to the exceptions noted in subsection 2, if the officer receives the recognizance of such person that the person will comply with the terms of the citation.
2. Personal recognizance is acceptable:
 - a. If not prohibited by state or local law or the compact manual; and
 - b. If the violator provides adequate proof of identification to the wildlife officer.
3. Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in

which the wildlife citation was issued. The report must be made in accordance with procedures specified by the issuing state and must contain information as specified in the compact manual as minimum requirements for effective processing by the home state.

4. Upon receipt of the report of conviction or noncompliance pursuant to subsection 3, the licensing authority of the issuing state shall transmit to the licensing authority of the home state of the violator the information in form and content as prescribed in the compact manual.

ARTICLE 4. PROCEDURE FOR HOME STATE

1. Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of the home state shall notify the violator and may initiate a suspension action in accordance with the home state's suspension procedures and may suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.
2. Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state may enter such conviction in its records and may treat such conviction as though it occurred in the home state for the purposes of the suspension of license privileges if the violation resulting in a suspension could have been the basis for suspension of license privileges in the home state.
3. The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states as provided in the compact manual.

ARTICLE 5. RECIPROCAL RECOGNITION OF SUSPENSION

1. All participating states may recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and could have been the basis for suspension of license privileges in their state.
2. Each participating state shall communicate suspension information to other participating states in form and content as contained in the compact manual.

ARTICLE 6. APPLICABILITY OF OTHER LAWS

Except as expressly required by this compact, nothing herein may be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

ARTICLE 7. COMPACT ADMINISTRATOR - PROCEDURES

1. For the purposes of administering this compact and to serve as a governing body for the resolution of all matters relating to the operation

of this compact, a board of compact administrators is established. The board is composed of one representative from each of the participating states to be known as the compact administrator. The compact administrator must be appointed by the head of the licensing authority of each participating state and serves and is subject to removal in accordance with the laws of the state the compact administrator represents. A compact administrator may provide for the discharge of duties and the performance of functions as a board member by an alternate. An alternate is not entitled to serve unless written notification of the identity of the alternate has been given to the board.

2. Each member of the board of compact administrators is entitled to one vote. No action of the board is binding unless taken at a meeting at which a majority of the total number of the board's votes are cast in favor thereof. Action by the board may be only at a meeting at which a majority of the participating states is represented.
3. The board shall elect annually from its membership a presiding officer and a vice presiding officer.
4. The board shall adopt bylaws not inconsistent with the provisions of this compact or the laws of a participating state for the conduct of its business and may amend and rescind its bylaws.
5. The board may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and receive, utilize, and dispose of the same.
6. The board may contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm, or corporation, or any private nonprofit organization or institution.
7. The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action must be contained in a compact manual.

ARTICLE 8. ENTRY INTO COMPACT AND WITHDRAWAL

1. This compact becomes effective at such time as it is adopted in a substantially similar form by two or more states.
2. a. Entry into the compact must be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the presiding officer of the board.
b. The resolution must substantially be in the form and content as provided in the compact manual and must include the following:
 - (1) A citation of the authority from which the state is empowered to become a party to this compact;
 - (2) An agreement of compliance with the terms and provisions of this compact; and

- (3) An agreement that compact entry is with all states participating in the compact and with all additional states legally becoming a party to the compact.
 - c. The effective date of entry must be specified by the applying state but may not be less than sixty days after notice has been given:
 - (1) By the presiding officer of the board of the compact administrators; or
 - (2) By the secretariat of the board to each participating state that the resolution from the applying state has been received.
3. A participating state may withdraw from participation in this compact by official written notice to each participating state, but withdrawal does not become effective until ninety days after the notice of withdrawal is given. The notice must be directed to the compact administrator of each member state. Withdrawal of any state does not affect the validity of this compact as to the remaining participating states.

ARTICLE 9. AMENDMENTS TO THE COMPACT

1. This compact may be amended from time to time. Amendments must be presented in resolution form to the presiding officer of the board of the compact administrators and must be initiated by one or more participating states.
2. Adoption of an amendment requires endorsement by all participating states and becomes effective thirty days after the date of the last endorsement.
3. Failure of a participating state to respond to the compact presiding officer within one hundred twenty days after receipt of a proposed amendment constitutes endorsement thereof.

ARTICLE 10. CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or the United States, or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of the compact is not affected thereby. If this compact is held contrary to the constitution of any participating state, the compact remains in full force and effect as to the remaining states and in full force and effect as to the participating state affected as to all severable matters.

SECTION 2. Department authorization to effect purposes of compact.

1. The department shall enforce the interstate wildlife violator compact and shall do all things within the department's jurisdiction that are appropriate in order to effectuate the purposes and the intent of the compact.
2. The department, in consultation with the chairman of the legislative council, is authorized on behalf of the state to enter or withdraw from the

interstate wildlife violator compact pursuant to the terms of article 8 of the compact.

3. The department, in consultation with the chairman of the legislative council, is authorized to adopt amendments to the interstate wildlife violator compact pursuant to the terms of article 9 of the compact.

SECTION 3. Reciprocal recognition of license suspensions - Suspension of privileges for conviction in participating state - Penalty.

1. When the department receives notice of the suspension of a person's hunting, trapping, or fishing privileges by a participating state, the department shall determine whether the violation leading to the suspension could have led to the forfeiture of privileges under this state's law. If the department determines that the person's privileges could have been forfeited, the department may suspend the person's privileges to hunt, trap, or fish in this state for the same period as imposed by the participating state not to exceed the maximum limits allowed by state law.
2. When the department receives notice of a conviction of a state resident from the licensing authority of the issuing state, the department may treat the conviction as if it had occurred in this state and shall determine whether the conviction could have led to the forfeiture of the resident's hunting, trapping, or fishing privileges under state law. If the department determines that the resident's privileges could have been forfeited, the department may suspend the resident's privileges to hunt, trap, or fish in this state for the same period as the issuing state, not to exceed the limit that could have been imposed under state law.
3. Notice of the suspension must be sent to the person, who must surrender any current North Dakota hunting, trapping, or fishing licenses to the department within ten days.
4. A person whose privileges have been suspended and who hunts, traps, or fishes in this state, who applies for or purchases any licenses or permits to hunt, trap, or fish in this state, or who refuses to surrender any current hunting, trapping, or fishing licenses as required is guilty of a class A misdemeanor.

SECTION 4. Suspension of privileges for failure to comply with citation issued in participating state - Penalty.

1. The department may suspend the hunting, trapping, or fishing privileges of any resident of this state upon notification from the licensing authority of an issuing state that the resident has failed to comply with the terms of a citation issued for a wildlife violation. The suspension remains in effect until the department receives satisfactory evidence of compliance from the issuing state.
2. Notice of the suspension must be sent to the resident, who shall surrender all current North Dakota hunting, trapping, or fishing licenses to the department within ten days.
3. A person who hunts, traps, or fishes, who applies for or purchases licenses or permits, or who refuses to surrender any current hunting,

trapping, or fishing license in violation of this section is guilty of a class A misdemeanor.

SECTION 5. Hearing on suspension.

1. Upon suspending the hunting, trapping, or fishing privileges of any person under section 3 or 4 of this Act, the department shall immediately notify the person in writing. The person may, within twenty days of the notice, request a hearing before the department on whether the requirements for suspension have been met.
2. Upon request, the department shall set a hearing as early as practicable.
3. a. The requesting person may present evidence and arguments at the hearing contesting whether:
 - (1) A participating state suspended the person's privileges;
 - (2) There was a conviction in the participating state;
 - (3) The person failed to comply with the terms of a citation issued for a wildlife violation in a participating state; or
 - (4) A conviction in a participating state could have led to the forfeiture of privileges under North Dakota law.
- b. Grounds other than those listed in subdivision a may not be used to contest the department's decision to suspend the person's privileges.
4. At the hearing, the department, through its authorized agent, may:
 - a. Administer oaths;
 - b. Issue subpoenas for the attendance of witnesses; and
 - c. Admit all relevant evidence and documents, including notifications from participating states.
5. Following the hearing, the department, through its authorized agent, may, based on the evidence, affirm, modify, or rescind the suspension of privileges.

Approved March 15, 2001
Filed March 15, 2001

CHAPTER 231**HOUSE BILL NO. 1269**

(Representatives Hanson, S. Kelsh, Kroeber)
(Senators Nething, Stenehjem, Wanzek)

RESIDENT AND NONRESIDENT HUNTING STUDY

AN ACT to provide for a legislative council study of issues relating to resident and nonresident hunting in this state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY OF RESIDENT AND NONRESIDENT HUNTING. During the 2001-2002 interim, the legislative council shall study issues relating to resident and nonresident hunting in this state. The study must include the number of licenses issued to residents and nonresidents and the fees for those licenses, the time period for which a license is valid, whether zones should be established, effects on landowners, effects on guides and outfitters, the economic impact of nonresident hunters on the state of North Dakota, and how states bordering North Dakota are addressing issues relating to nonresident and resident hunting. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 18, 2001

Filed April 18, 2001

HEALTH AND SAFETY

CHAPTER 232

SENATE BILL NO. 2327

(Senators Fischer, Flakoll, Watne)
(Representatives Devlin, Fairfield, Porter)

BIRTH AND DEATH CERTIFICATES

AN ACT to amend and reenact sections 23-02.1-09, 23-02.1-10, and 23-02.1-13, subsection 1 of section 23-02.1-14, sections 23-02.1-19, 23-02.1-20, and 23-02.1-21, and paragraph 2 of subdivision a of subsection 3 of section 50-09-08.2 of the North Dakota Century Code, relating to birth, death, and fetal death certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-02.1-09 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-09. Compensation of local registrars.

4. Each local registrar must be paid the sum of twenty-five cents for each certificate of ~~birth, death, or fetal death~~ registered by ~~him~~ the registrar and transmitted to the state registrar ~~in accordance with the rules and regulations issued hereunder.~~
2. If no ~~birth, death, or fetal death~~ is registered by ~~him~~ the registrar during any calendar month, the local registrar shall report that fact to the state registrar and be paid the sum of twenty-five cents.

SECTION 2. AMENDMENT. Section 23-02.1-10 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-10. Payment of fees to the local registrar. The state registrar shall certify to the county auditors the number of ~~birth, death, and fetal death~~ certificates registered by each local registrar, with the names of the local registrars and the amount due. Upon ~~such~~ the certification, the fees due the local registrar must be paid by the auditor of the county out of the general fund of the county.

SECTION 3. AMENDMENT. Section 23-02.1-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-02.1-13. Birth registration.

1. A certificate of birth for each live birth ~~which~~ that occurs in this state must be filed with the ~~local~~ state registrar ~~of the district in which the birth occurs within seven days after such birth and must be registered by such registrar if it has been completed and filed in accordance with this section; provided, that when a birth occurs on a moving conveyance, a~~

birth certificate must be filed in the district in which the child is first removed from the conveyance.

2. When a birth occurs in an institution, the person in charge of the institution or ~~his~~ a designated representative shall obtain the personal data, prepare the certificate, secure the signatures required by the certificate, and file it with the ~~local~~ state registrar. The physician in attendance shall certify to the facts of birth and provide the medical information required by the certificate within six days after the birth.
3. When a birth occurs outside an institution, the certificate must be prepared and filed by one of the following in the indicated order of priority:
 - a. The physician in attendance at or immediately after the birth, or in the absence of such a person;₂
 - b. Any other person in attendance at or immediately after the birth, or in the absence of such a person;₂
 - c. The father, the mother, or in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.
4. If a man and the mother are or have been married or have attempted to marry each other in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born during the marriage or attempted marriage, or within three hundred days after the termination of cohabitation or after the marriage or attempted marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of ~~such~~ the man must be entered on the certificate as the father of the child unless the presumption of paternity has been rebutted by a court decree.
5. If the child is not born during the marriage of the mother, or within three hundred days after ~~any such~~ a marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court, the name of the father may not be entered on the birth certificate unless:
 - a. After the child's birth, the father and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
 - (1) He has acknowledged his paternity of the child in writing filed with the state registrar;
 - (2) With his consent, he is named as the child's father on the child's birth certificate; or
 - (3) He is obligated to support the child under a written voluntary promise or by court order;

- b. While the child is under the age of majority, he received the child into his home and openly holds out the child as his natural child;
 - c. After the child's birth, the child's natural mother and the father voluntarily acknowledge the child's paternity in a writing signed by both and filed with the state registrar; or
 - d. A court or other entity of competent jurisdiction has adjudicated paternity.
6. If, in accordance with subsections 4 and 5, the name of the father of the child is not entered on the certificate of birth, the child's surname must be shown on the birth certificate as the legal surname of the mother at the time of birth unless an affidavit or an acknowledgment of paternity signed by both parents is received stating the surname to be that of the father.
7. ~~In the case of a child born out of wedlock, the certificate must be filed directly with the state registrar.~~

SECTION 4. AMENDMENT. Subsection 1 of section 23-02.1-14 of the North Dakota Century Code is amended and reenacted as follows:

1. Whoever assumes custody of a living infant of unknown parentage shall report on a form and in the manner prescribed by the state registrar within seven days to the ~~local~~ state registrar ~~of the district in which the child was found,~~ the following information:
 - a. The date and place of finding.
 - b. Sex, color, or race, and approximate age of child and approximate date of birth.
 - c. Name and address of the persons or institution with whom the child has been placed for care.
 - d. Name given to the child by the custodian.
 - e. Other data required by the state registrar.

SECTION 5. AMENDMENT. Section 23-02.1-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-02.1-19. Death registration.

1. A death certificate for each death which occurs in this state must be filed with the local registrar of the district in which the death occurred within fifteen days after ~~such~~ the death and must be registered by ~~such~~ the registrar if it has been completed and filed in accordance with this section, provided:
 - a. That if the place of death is unknown, a death certificate must be filed in the registration district in which a dead body is found within fifteen days after ~~such~~ the occurrence.

- b. That if a death occurs on a moving conveyance, a death certificate must be filed in the registration district in which the dead body was first removed from the conveyance.
2. Notwithstanding subsection 1, if the state registrar has implemented an automated system that allows each local registrar to produce certified copies of death certificates in the local registrar's offices within two working days of filing, death certificates must be filed with the state registrar.
 3. The funeral director or person acting as such who first assumes custody of a dead body shall file the death certificate. He The funeral director shall obtain the personal data from the next of kin or the best qualified person or source available. He The funeral director shall obtain the medical certification of cause of death from the person responsible therefor for the medical certification.
 - ~~3.~~ 4. The medical certification must be completed and signed within fifteen days after death by the physician 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.
 4. 5. When death occurred without medical attendance ~~as set forth in subsection 3~~ or when inquiry is required by the local health officer or coroner, the county coroner shall investigate the cause of death and shall complete and sign the medical certification within fifteen days after taking charge of the case.
 - ~~5.~~ 6. If the cause of death cannot be determined within fifteen days after death, the medical certification may be filed after the prescribed period, ~~as required by and~~ in accordance with ~~regulations promulgated~~ rules adopted by the state department of health. The attending physician 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 or coroner.
 - ~~6.~~ 7. When a death is presumed to have occurred within this state but the body cannot be located, a death certificate may be prepared by the state registrar upon receipt of findings of a court of competent jurisdiction, including the personal data and medical data required to complete the death certificate. ~~Such a~~ The death certificate must be marked "presumptive" and must show on its face the date of registration and must identify the court and the date of the decree.
 - ~~7.~~ 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.

SECTION 6. AMENDMENT. Section 23-02.1-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-02.1-20. Fetal death registration.

1. A fetal death certificate for each fetal death which occurs in this state after a gestation period of twenty completed weeks or more or of less

than twenty completed weeks of gestation where provided by rules ~~and regulations~~ of the state department of health must be filed with the ~~local state~~ registrar ~~of the district in which the delivery occurred within fifteen days after such delivery,~~ and must be registered by such registrar if it has been completed and filed in accordance with this section, provided:

- a. That if the place of fetal death is unknown, a fetal death certificate must be filed in the registration district in which the dead infant is found within fifteen days after the time of finding.
 - b. That if a fetal death occurs in a moving conveyance, a fetal death certificate must be filed in the registration district in which the fetus was first removed from the conveyance.
2. The funeral director ~~or person acting as such~~ who first assumes custody of a fetus shall file the fetal death certificate. In the absence of such a person, the physician or other person in attendance at or after delivery shall file the certificate of fetal death. ~~He~~ The person filing the certificate of death shall obtain the personal data from the next of kin or the best qualified person or source available. ~~He~~ The person filing the certificate of death shall obtain the medical certification of cause of death from the person responsible ~~therefor~~ for the medical certification.
 3. The medical certification must be completed and signed by the physician in attendance at the delivery within fifteen days after the delivery except when inquiry is required by the local health officer or coroner.
 4. When inquiry is required by the local health officer or coroner or in the absence of medical attendance, the county coroner shall investigate the cause of fetal death and sign the medical certification within fifteen days after taking charge of the case.
 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, ~~as required by and~~ in accordance with rules ~~and regulations promulgated~~ adopted by the state department of health. The attending physician 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 or coroner.
 6. The provision for entering the name of the father of the fetus on the fetal death certificate and the reporting of out of wedlock fetal deaths concur exactly with those set forth in ~~subsections 4 through 7 of~~ section 23-02.1-13.

SECTION 7. AMENDMENT. Section 23-02.1-21 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-21. Permits.

1. The funeral director ~~or person acting as such~~ who first obtains custody of a dead body or fetus shall obtain a burial-transit permit ~~prior to~~ before final disposition or removal from this state of the body or fetus.

2. ~~Such~~ The burial-transit permits must be issued by the state registrar or the local registrar or subregistrar of the district where the certificate of death or fetal death will be filed in accordance with the requirements of sections 23-02.1-19 and 23-02.1-20.
3. A burial-transit permit issued under the laws of another state which accompanies a dead body or fetus brought into this state is authority for final disposition of the body or fetus in this state.
4. A permit for disinterment and reinterment is required ~~prior to~~ before disinterment of a dead body or fetus except as authorized by ~~regulations~~ rules or otherwise provided by law. ~~Such~~ The permit must be issued by the state registrar to a licensed embalmer upon proper application.

¹²³ **SECTION 8. AMENDMENT.** Paragraph 2 of subdivision a of subsection 3 of section 50-09-08.2 of the North Dakota Century Code is amended and reenacted as follows:

- (2) For encumbering or surrendering any assets held by a financial institution in response to a notice of lien or an execution issued by the state agency as provided in ~~subsection 7 of~~ section 23-02.1-19 and chapter 34-15; or

Approved March 28, 2001
Filed March 28, 2001

¹²³ Section 50-09-08.2 was also amended by section 8 of Senate Bill No. 2160, chapter 152.

CHAPTER 233

HOUSE BILL NO. 1154

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

VETERAN BURIAL LOCATION RECORDING

AN ACT to amend and reenact section 23-06-21 of the North Dakota Century Code, relating to providing information on the burial locations of wartime veterans; and to repeal section 37-03-12 and chapter 37-16 of the North Dakota Century Code, relating to recording of persons who provided military service during World War II and the Korean hostilities and recording the burial places of wartime veterans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06-21. Regulation of cemeteries. All persons, corporations, municipalities, associations, and organizations owning, conducting, or maintaining a cemetery or plot for the burial of dead human bodies shall:

1. Provide for a sexton or secretary.
2. Cause the lot or parcel of ground used and designated as a cemetery to be platted into orderly blocks and lots, alleys and streets or driveways, giving to each a distinctive name or number that must be a permanent designation of its location.
3. File the original plat with the register of deeds of the county in which the cemetery or place of burial is located and the copy or blueprint thereof with the sexton or secretary.
4. Register with the state department of health the name and location of the cemetery or place of burial, the name and address of the sexton, and the name and address of other officers of the cemetery association, corporation, or organization.
5. Furnish such information and reports as the state department of health may require including the submission of plans and specifications for review and approval before constructing, erecting, or placing on the burial site for the burial or disposition of any human remains any interment structure or device constructed or placed wholly or partially above the natural surface of the ground.
6. Keep a local register of all burials showing as to each burial the name of the deceased, the date and location of burial, the date of death, and the name and address of the undertaker.
7. ~~Comply with the provisions of section 37-16-02, relating to transmittal of information to the adjutant general regarding the interment of persons~~

who served in the military or naval forces of the United States in time of war.

SECTION 2. REPEAL. Section 37-03-12 and chapter 37-16 of the North Dakota Century Code are repealed.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 234

SENATE BILL NO. 2341

(Senators Lee, T. Mathern)
(Representatives Mahoney, Price, Svedjan)

ADVANCE HEALTH CARE DIRECTIVES

AN ACT to amend and reenact sections 23-06.4-03, 23-06.5-05, and 23-06.5-16 and subsection 9 of section 23-06.5-17 of the North Dakota Century Code, relating to the form and execution of advance health care directives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06.4-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06.4-03. Declaration relating to use of life-prolonging treatment.

1. An individual of sound mind and eighteen or more years of age may execute at any time a declaration governing the use, withholding, or withdrawal of life-prolonging treatment, nutrition, and hydration. The declaration must be signed by the declarant, or another at the declarant's direction, and ~~witnessed by two individuals who are not~~ contain verification of the declarant's signature or the signature of the person directed by the declarant to sign on behalf of the declarant, either by notary public or by two witnesses who are at least eighteen years of age. A person notarizing the declaration may be an employee of a health care or long-term care provider providing direct care to the declarant. At least one witness to the execution of the declaration must not be a health care provider providing direct care to the declarant or an employee of the health care provider providing direct care to the declarant on the date of execution. The notary public or any witness may not be:
 - a. ~~Related~~ The declarant's spouse or related to the declarant by blood, marriage, or ~~marriage~~ adoption;
 - b. Entitled to any portion of the estate of the declarant under any will of the declarant or codicil to the will or deed, existing by operation of law or otherwise, at the time of the declaration;
 - c. Claimants against any portion of the estate of the declarant at the time of the execution of the declaration;
 - d. Directly financially responsible for the declarant's medical care; or
 - e. Attending physicians of the declarant.
2. ~~If the declarant is a resident of a long-term care facility, as defined in section 50-10.1-01, at the time the declaration is executed, one of the two witnesses to the declaration must be a recognized member of the clergy, an attorney licensed to practice in this state, or a person as may~~

be designated by the department of human services or the district court for the county in which the facility is located.

3. ~~A declaration must be substantially in the~~ The following statutory form, but the is a preferred form, but not a required form, by which a person may execute a declaration. The declaration may include additional specific directives. Another form may be used if it complies with this chapter. The invalidity of any additional specific directives does not affect the validity of the declaration.

I declare on (month, day, year):

- a. I have made the following decision concerning life-prolonging treatment (initial 1, 2, or 3):

(1) I direct that life-prolonging treatment be withheld or withdrawn and that I be permitted to die naturally if two physicians certify that:

(a) I am in a terminal condition that is an incurable or irreversible condition which, without the administration of life-prolonging treatment, will result in my imminent death;

(b) The application of life-prolonging treatment would serve only to artificially prolong the process of my dying; and

(c) I am not pregnant.

It is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and that they accept the consequences of that refusal, which is death.

(2) I direct that life-prolonging treatment, which could extend my life, be used if two physicians certify that I am in a terminal condition that is an incurable or irreversible condition which, without the administration of life-prolonging treatment, will result in my imminent death. It is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to direct that medical or surgical treatment be provided.

(3) I make no statement concerning life-prolonging treatment.

- b. I have made the following decision concerning the administration of nutrition when my death is imminent (initial only one statement):

(1) I wish to receive nutrition.

(2) I wish to receive nutrition unless I cannot physically assimilate nutrition, nutrition would be physically harmful or would cause unreasonable physical pain, or nutrition would only prolong the process of my dying.

- (3) I do not wish to receive nutrition.
- (4) I make no statement concerning the administration of nutrition.
- c. I have made the following decision concerning the administration of hydration when my death is imminent (initial only one statement):
- (1) I wish to receive hydration.
- (2) I wish to receive hydration unless I cannot physically assimilate hydration, hydration would be physically harmful or would cause unreasonable physical pain, or hydration would only prolong the process of my dying.
- (3) I do not wish to receive hydration.
- (4) I make no statement concerning the administration of hydration.
- d. Concerning the administration of nutrition and hydration, I understand that if I make no statement about nutrition or hydration, my attending physician may withhold or withdraw nutrition or hydration if the physician determines that I cannot physically assimilate nutrition or hydration or that nutrition or hydration would be physically harmful or would cause unreasonable physical pain.
- e. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this declaration is not effective during the course of my pregnancy.
- f. I understand the importance of this declaration, I am voluntarily signing this declaration, I am at least eighteen years of age, and I am emotionally and mentally competent to make this declaration.
- g. I understand that I may revoke this declaration at any time.

Signed _____

City, County, and State of Residence _____

~~The declarant is known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any portion of the declarant's estate upon the declarant's death, or a person directly financially responsible for the declarant's medical care.~~

Witness _____

Witness _____

- h. Option 1: Notary Public

In my presence on _____ (date),
 _____ (name of declarant) acknowledged the
declarant's signature on this document or acknowledged that the
 declarant directed the person signing this document to sign on the
 declarant's behalf.

 (Signature of Notary Public)

My commission expires _____, 20 ____:

i. Option 2: Two Witnesses

Witness One:

(1) In my presence on _____ (date),
 _____ (name of declarant)
acknowledged the declarant's signature on this document or
 acknowledged that the declarant directed the person signing
 this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care or long-term care provider or an
 employee of a health care or long-term care provider giving
 direct care to the declarant, I must initial this box: [__].

I certify that the information in (1) through (3) is true and correct.

 (Signature of Witness One)

 (Address)

Witness Two:

(1) In my presence on _____ (date),
 _____ (name of declarant) acknowledged
the declarant's signature on this document or acknowledged
 that the declarant directed the person signing this document
 to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care or long-term care provider or an
 employee of a health care or long-term care provider giving
 direct care to the declarant, I must initial this box: [__].

I certify that the information in (1) through (3) is true and correct.

(Signature of Witness Two)

(Address)

4. 3. A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant.

SECTION 2. AMENDMENT. Section 23-06.5-05 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-05. Execution and witnesses. The durable power of attorney for health care must be signed by the principal ~~in the presence of~~ and that signature must be verified by a notary public or at least two or more subscribing witnesses, neither of whom may who are at least eighteen years of age. A person notarizing the document may be an employee of a health care or long-term care provider providing direct care to the principal. At least one witness to the execution of the document must not be a health care or long-term care provider providing direct care to the principal or an employee of a health care or long-term care provider providing direct care to the principal on the date of execution. The notary public or any witness may not be, at the time of execution, be the agent, the principal's health or long-term care services provider or the provider's employee, the principal's spouse or heir, a person related to the principal by blood, marriage, or adoption, a person entitled to any part of the estate of the principal upon the death of the principal under a will or deed in existence or by operation of law, or any other person who has, at the time of execution, any claims against the estate of the principal, a person directly financially responsible for the principal's medical care, or the attending physician of the principal. The witnesses shall affirm that the principal appeared to be of sound mind and free from duress at the time the durable power of attorney for health care was signed and that the principal affirmed that the principal was aware of the nature of the documents and signed it freely and voluntarily. If the principal is physically unable to sign, the durable power of attorney for health care may be signed by the principal's name being written by some other person in the principal's presence and at the principal's express direction.

SECTION 3. AMENDMENT. Section 23-06.5-16 of the North Dakota Century Code is amended and reenacted as follows:

23-06.5-16. Use of statutory form. The statutory form of durable power of attorney described in section 23-06.5-17 may be used and is the preferred form, but not a required form, by which a person may execute a durable power of attorney for health care pursuant to this chapter. It is known as "the statutory form of durable power of attorney for health care". Another form may be used if it complies with this chapter.

SECTION 4. AMENDMENT. Subsection 9 of section 23-06.5-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. **PRIOR DESIGNATIONS REVOKED.** I revoke any prior durable power of attorney for health care.

who has, at the time of executing this document, any claim against the principal's estate.

Signature: _____ Residence Address: _____
 Print Name: _____
 Date: _____
 Signature: _____ Residence Address: _____
 Print Name: _____
 Date: _____

Option 1: Notary Public

In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(Signature of Notary Public)

My commission expires _____, 20__.

Option 2: Two Witnesses

Witness One:

(1) In my presence on _____ (date), _____ (name of declarant), acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

(2) I am at least eighteen years of age.

(3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [__].

I certify that the information in (1) through (3) is true and correct.

(Signature of Witness One)

(Address)

Witness Two:

(1) In my presence on _____ (date), _____ (name of declarant) acknowledged

the declarant's signature on this document or acknowledged that the declarant directed the person signing this document to sign on the declarant's behalf.

- (2) I am at least eighteen years of age.
- (3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [__].

I certify that the information in (1) through (3) is true and correct.

(Signature of Witness Two)

(Address)

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 235

SENATE BILL NO. 2451

(Senators D. Mathern, Lee)
(Representative Svedjan)

MEDICAL RECORD ACCESS

AN ACT to amend and reenact subsection 5 of section 23-07.5-02 of the North Dakota Century Code, relating to access to a dead person's medical records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 23-07.5-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 any contagious disease 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, 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.

Approved March 29, 2001
Filed March 29, 2001

CHAPTER 236**HOUSE BILL NO. 1296**
(Representative Hawken)
(Senator Fischer)**HIV RECORD MAINTENANCE**

AN ACT to amend and reenact section 23-07.5-04 of the North Dakota Century Code, relating to the human immunodeficiency virus record maintenance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.5-04 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-04. Record maintenance. A health care provider, blood bank, blood center, or plasma center that ~~obtains~~ collects a specimen of body fluids or tissues for the purpose of testing for the presence of an antibody to the human immunodeficiency virus shall:

1. Obtain from the subject;₁ the subject's parent ~~or~~₁ legal guardian₁ or custodian if the subject is a minor₁; or the subject's legal guardian if the subject is incapacitated, informed consent for testing or disclosure, unless testing and procedures for disclosure are otherwise provided by law.
2. Maintain a record of the consent received under subsection 1.
3. Maintain a record of the test results obtained.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 237

SENATE BILL NO. 2098

(Human Services Committee)

(At the request of the Indian Affairs Commission)

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 the moratorium on expansion of basic and long-term care bed capacity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁴ **SECTION 1. AMENDMENT.** Section 23-09.3-01.1 of the 1999 Supplement to 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 existing beds are converted for use by a nursing facility that converts licensed nursing facility bed capacity to basic care bed capacity or the alzheimer's and related dementia population under the pilot projects provided for in 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, 1999 2001, during the period between August 1, 1999 2001, and July 31, 2004 2003.
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, 1999 2001, to July 31, 2004 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. Existing licensed beds released by a facility which are not immediately and transferred to another facility may not be banked for future transfer to another facility must become licensed within twenty-four months of transfer.
3. Transfer of existing beds from one municipality to a tribal reservation during the period August 1, 2001, to July 31, 2003, 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 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

¹²⁴ Section 23-09.3-01.1 was also amended by section 9 of House Bill No. 1196, chapter 431.

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.

¹²⁵ **SECTION 2. AMENDMENT.** Section 23-16-01.1 of the 1999 Supplement to 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, ~~1999~~ 2001, during the period between August 1, ~~1999~~ 2001, and July 31, ~~2004~~ 2003.
2. Transfers of existing beds from one municipality to another municipality must be approved if the department of health licensing requirements are met, during the period August 1, ~~1999~~ 2001, to July 31, ~~2004~~ 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. Existing licensed beds released by a facility ~~which are not immediately and transferred to another facility may not be banked for future transfer to another facility~~ must become licensed within twenty-four months of transfer.
3. Transfer of existing beds from one municipality to a tribal reservation during the period August 1, 2001, to July 31, 2003, 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 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.

¹²⁵ Section 23-16-01.1 was also amended by section 10 of House Bill No. 1196, chapter 431.

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.

Approved April 19, 2001

Filed April 19, 2001

CHAPTER 238**HOUSE BILL NO. 1240**

(Representatives Maragos, Delmore, Disrud)
(Senator Schobinger)

MOBILE PARK CHANGE OR CLOSURE

AN ACT to create and enact a new section to chapter 23-10 of the North Dakota Century Code, relating to the change in use or closure of a mobile park.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-10 of the North Dakota Century Code is created and enacted as follows:

Change in use or closure of mobile home park. If the owner of a mobile home park applies for the rezoning of a park, the owner shall post a notice of the proposed rezoning in the park at least five days before the public hearing on the rezoning. In addition, the owner of a mobile home park shall notify all tenants in that park in writing of a change in use at least one hundred eighty days before the change in use. A change in use is a change in the park that would alter any portion of the park which is used to lease to mobile home owners so that the portion will no longer be leased to mobile home owners. The owner or manager may not increase rent within ninety days before giving notice of a change in use for the portion of the park to which the change will apply.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 239

HOUSE BILL NO. 1242

(Representatives Maragos, Delmore, Dosch, Grosz, Meier)
(Senator Dever)

MOBILE HOME SECURITY DEPOSITS

AN ACT to create and enact a new section to chapter 23-10 of the North Dakota Century Code, relating to mobile home security deposits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-10 of the North Dakota Century Code is created and enacted as follows:

Mobile home security deposit. The amount of a security deposit may not be modified after the initial lease agreement between a mobile home park owner and a tenant has been executed by both parties.

Approved April 3, 2001

Filed April 3, 2001

CHAPTER 240

HOUSE BILL NO. 1233 (Representatives DeKrey, Weisz) (Senators Fischer, D. Mathern)

MEDICAL RECORD COPIES

AN ACT to amend and reenact section 23-12-14 of the North Dakota Century Code, relating to copies of medical records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁶ **SECTION 1. AMENDMENT.** Section 23-12-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-12-14. Copies of medical records.

1. As used in this section, "medical 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 provider's patient or any person authorized by a patient, the medical provider shall:
 - a. Provide a free copy of a patient's medical records to a medical 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 care to another medical 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 written medical records release must be for a specific stated time, but not to exceed three years or until revoked in writing by the patient.
3. 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.

Approved April 13, 2001
Filed April 13, 2001

¹²⁶ Section 23-12-14 was also amended by section 1 of House Bill No. 1234, chapter 241.

CHAPTER 241

HOUSE BILL NO. 1234 (Representative DeKrey)

MEDICAL RECORDS RELEASE

AN ACT to amend and reenact section 23-12-14 of the North Dakota Century Code, relating to consent to release of medical records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁷ **SECTION 1. AMENDMENT.** Section 23-12-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-12-14. Copies of medical records.

1. As used in this section, "medical 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 provider's patient or any person authorized by a patient, the medical provider shall:
 - a. Provide a free copy of a patient's medical records to a medical 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 care to another medical 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 must be for a specific stated time, but not to exceed three years or until revoked in writing by the patient 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.

¹²⁷ Section 23-12-14 was also amended by section 1 of House Bill No. 1233, chapter 240.

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.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 242

SENATE BILL NO. 2393 (Senator Mutch)

LIQUEFIED PETROLEUM GAS CONTAINERS

AN ACT to amend and reenact section 23-13-03.2 of the North Dakota Century Code, relating to liquefied petroleum gas containers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-13-03.2 of the North Dakota Century Code is amended and reenacted as follows:

23-13-03.2. Liquefied petroleum gas containers - Unauthorized filling, transfer, or use - Prohibited covering of identification marks prohibited. It is unlawful for any person except the owner or the owner's authorized agent to fill, drain, or refill a ~~container with~~ liquefied petroleum gas; ~~or any other gas or compounds~~ container; or buy, sell, offer for sale, give, take, loan, deliver, or permit to be delivered, or otherwise use a liquefied petroleum gas container if the container bears upon its surface, in plainly legible characters, the name, initials, mark, or other identifying device of the owner; nor may any person other than the owner of a liquefied petroleum container or a person so authorized by the owner, deface, erase, obliterate, cover up, or otherwise remove or conceal any name, mark, initial, or identifying device on the container.

Approved March 28, 2001
Filed March 28, 2001

CHAPTER 243

HOUSE BILL NO. 1457

(Representatives B. Thoreson, Carlisle, Devlin, Sandvig)
(Senators Flakoll, Stenehjem)

RESIDENTIAL RENTAL PROPERTY SMOKE DETECTION SYSTEMS

AN ACT to amend and reenact section 23-13-15 of the North Dakota Century Code, relating to residential rental property smoke detection systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-13-15 of the North Dakota Century Code is amended and reenacted as follows:

23-13-15. Smoke detection systems for residential rental property - Penalty.

1. All residential rental property with the exception of property covered by section 23-09-02.1 must be equipped with smoke detection systems or other approved alarm systems for the protection of occupants of the property. Systems must be installed and maintained in compliance with applicable national fire protection standards as defined by rules adopted by the state fire marshal. The state fire marshal and local fire departments shall provide information concerning the installation of smoke detection systems to owners of residential rental properties. A system installed in a single family rental dwelling must be maintained and inspected by the tenant occupying the single family rental dwelling. In other dwellings, the landlord is responsible for installation and ensuring the proper operation of the system upon the occupancy of each new tenant. ~~The landlord may require the tenant to sign a certificate stating that the system is in proper working condition, on taking occupancy, if that is the case.~~ The tenant is responsible for maintaining the system during the tenant's occupancy.
2. Nothing in this section may be construed to alter the provisions of chapter 54-21.3 regarding smoke detection systems or alarm systems for newly constructed residences.
3. Any property owner who willfully fails to install a system as required by this section is guilty of a class B misdemeanor.

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 244

HOUSE BILL NO. 1297 (Representatives Porter, R. Kelsch) (Senator Cook)

HAZARDOUS WASTE LIMITED LIABILITY

AN ACT to create and enact a new section to chapter 23-20.3 of the North Dakota Century Code, relating to liability of property owners for hazardous waste on their property; and to amend and reenact section 23-31-01 of the North Dakota Century Code, relating to the recovery of costs of environmental emergencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-20.3 of the North Dakota Century Code is created and enacted as follows:

Limited liability for subsequent owners of property.

1. Notwithstanding any other provision of law and except as expressly provided by federal law, a person who acquires property is not liable for any existing hazardous waste or substance on the property if (a) the person acquired the property after the disposal or placement of the hazardous waste or substance on, in, or at the property, and at the time the person acquired the property that person did not know and had no reason to know that any hazardous waste or substance was disposed of on, in, or at the property, (b) the person is a governmental entity that acquired the property by escheat, by tax sale, foreclosure, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation, or (c) the person acquired the property by inheritance or bequest and that person did not know and had no reason to know that any hazardous waste or substance was disposed of on, in, or at the property.
2. To establish that the person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this requirement, a court shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property as uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate inspection.
3. A person who has acquired real property may establish a rebuttable presumption that that person has made all appropriate inquiry if that person establishes that, immediately before or at the time of acquisition, that person performed an investigation of the property, conducted by an environmental professional, to determine or discover the obviousness of

the presence or likely presence of a release or threatened release of hazardous waste or substances on the property.

4. The presumption does not arise unless the person has maintained a compilation of the information reviewed in the course of the investigation.
5. This section does not diminish the liability of any previous owner or operator of the property who would otherwise be liable under this chapter and nothing in this section affects the liability under this chapter of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous waste or substance that is the subject of the action relating to the property.
6. As used in this section, environmental professional means an individual, or entity managed or controlled by an individual, who, through academic training, occupational experience, and reputation, such as engineers, environmental consultants, and attorneys, can objectively conduct one or more aspects of an environmental investigation.

SECTION 2. AMENDMENT. Section 23-31-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-31-01. Environmental emergency cost recovery. ~~The~~ Except as provided in section 1 of this Act, the state department of health may recover from the parties responsible for an environmental emergency the reasonable and necessary state costs incurred in assessment, removal, corrective action, or monitoring as a result of an environmental emergency in violation of chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, or 61-28.1. As used in this chapter, "environmental emergency" means a release into the environment of a substance requiring an immediate response to protect public health or welfare or the environment from an imminent and substantial endangerment and which is in violation of chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, or 61-28.1, and "reasonable and necessary costs" means those costs incurred by the department as a result of the failure of the parties responsible for the environmental emergency to implement appropriate assessment and corrective action after receipt of written notice from the department. If assessment, removal, monitoring, or corrective action must be initiated prior to identification of the responsible parties, the department may assess those prior costs to the responsible parties at the time they are identified.

Approved March 27, 2001
Filed March 27, 2001

CHAPTER 245

SENATE BILL NO. 2124

(Human Services Committee)

(At the request of the State Department of Health)

LEAD-BASED PAINT REMEDIATION AND ABATEMENT

AN ACT to create and enact a new subsection to section 23-25-01, a new subsection to section 23-25-03, and a new subsection to section 23-25-05 of the North Dakota Century Code, relating to lead-based paint remediation and abatement; to amend and reenact section 23-25-03.1 of the North Dakota Century Code, relating to lead-based paint remediation and abatement; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 23-25-01 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight.

SECTION 2. A new subsection to section 23-25-03 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Provide by rules a program for implementing lead-based paint remediation training, certification, and performance requirements in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and 233.

SECTION 3. AMENDMENT. Section 23-25-03.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-25-03.1. Licensing of asbestos and lead-based paint contractors and certification of asbestos and lead-based paint workers. The department is charged with the responsibility of administering and enforcing a licensing program for asbestos contractors and lead-based paint contractors, and a certification program for asbestos workers and lead-based paint workers and is given and charged with the following powers and duties:

1. To require training of, and to examine, asbestos workers and lead-based paint workers.
2. To establish standards and procedures for the licensing of contractors, and the certification of asbestos workers engaging in the abatement of friable asbestos materials or nonfriable asbestos materials that become friable during abatement, and to establish performance standards for asbestos abatement. The performance standards will be as stringent as those standards adopted by the United States environmental protection

agency pursuant to section 112 of the Federal Clean Air Act, as amended.

3. To establish standards and procedures for the licensing of contractors and the certification of lead-based paint workers engaging in the abatement of lead-based paint and to establish performance standards for lead-based paint abatement in accordance with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and 233.
4. To issue certificates to all applicants who satisfy the requirements for certification under this section and any rules under this section, to renew certificates and to suspend or revoke certificates for cause after notice and opportunity for hearing.
4. 5. To establish an annual fee and renewal fees for licensing asbestos contractors and lead-based paint contractors and certifying asbestos and lead-based paint workers and to establish examination fees for asbestos and lead-based paint workers under section 23-25-04.2. The annual, renewal, and examination fees for lead-based contractors and workers may not exceed those charged to asbestos contractors and workers.
- ~~5.~~ 6. To establish indoor environmental nonoccupational air quality standards for asbestos.
- ~~6.~~ 7. To adopt and enforce rules as necessary for the implementation of this section.

For nonpublic employees performing asbestos abatement in facilities or on facility components owned or leased by their employer, only the provisions of rules adopted in accordance with the Federal Asbestos Hazard Emergency Response Act of 1986 [Pub. L. 99-519; 100 Stat. 2970; 15 U.S.C. 2641 et seq.], as amended, or the Federal Clean Air Act [Pub. L. 95-95; 91 Stat. 685; 42 U.S.C. 7401 et seq.], as amended, apply to this section. This does not include ownership that was acquired solely to effect a demolition or renovation.

SECTION 4. A new subsection to section 23-25-05 of the North Dakota Century Code is created and enacted as follows:

For the purpose of ascertaining the state of compliance with this chapter and any applicable rules, any duly authorized officer, employee, or agent of the department may enter and inspect, at any reasonable time, any property, premises, or place on or at which a lead-based paint remediation activity is ongoing. If requested, the department shall provide to the owner or operator of the premises a report that sets forth all facts found which relate to compliance status.

SECTION 5. APPROPRIATION. There is appropriated from special funds derived from federal funds and from other income, the sum of \$117,000, or so much of the sum as may be necessary, to the state department of health for the purpose of regulating lead-based paint activities, for the biennium beginning July 1, 2001, and ending June 30, 2003.

CHAPTER 246

HOUSE BILL NO. 1202

(Representatives Porter, Severson, Galvin, Pollert)
(Senators Christmann, Klein)

EMERGENCY MEDICAL SERVICES OPERATIONS

AN ACT to create and enact section 23-27-04.5 of the North Dakota Century Code, relating to the creation of a quick-response unit service pilot program; to amend and reenact sections 11-28.3-01, 11-28.3-08, 11-28.3-09, 11-28.3-14, 23-12-08, 23-27-01, 23-27-02, 23-27-03, 23-27-04, 23-27-04.1, 23-27-04.2, 23-27-04.3, 23-27-04.4, 57-15-06.7, 57-15-20.2, 57-15-50, 57-15-51, 57-15-51.1, and subsection 21 of section 58-03-07 of the North Dakota Century Code, relating to licensure of emergency medical services operations and mill levies for emergency medical services and rural ambulance services; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-28.3-01 of the North Dakota Century Code is amended and reenacted as follows:

11-28.3-01. Territory to be organized - Petition. Whenever twenty percent of the qualified electors, as determined by the vote cast in the last preceding gubernatorial election, residing in any rural territory, equivalent in area to one township or more not presently served by an existing ~~ambulance~~ emergency medical service, elect to form, organize, establish, equip, and maintain a rural ambulance service district, they shall signify their intention by presenting to the county auditor of the county or counties in which the territory is situated, a petition setting forth the desires and purposes of the petitioners. The petition shall contain the full names and post-office addresses of the petitioners, the suggested name of the proposed district, the area in square miles [hectares] to be included therein, and a complete description according to government survey, wherever possible, of the boundaries of the real properties intended to be embraced in the proposed rural ambulance service district. A plat or map showing the suggested boundaries of the proposed district shall accompany the petition, and the petitioner shall also deposit with the county auditor a sum sufficient to defray the expense of publishing the notices required by sections 11-28.3-02 and 11-28.3-03. Provided further that any city located within the area, whether such city has ~~ambulance service~~ emergency medical services or not, may be included in the rural ambulance district if twenty percent or more of the qualified electors residing in the city sign the petition.

SECTION 2. AMENDMENT. Section 11-28.3-08 of the North Dakota Century Code is amended and reenacted as follows:

11-28.3-08. Powers of board of directors. The board of directors shall have the following general powers to:

1. Develop a general ~~ambulance~~ emergency medical service program for the district.

2. Make an annual estimate of the probable expense of carrying out the program.
3. Annually certify that estimate to the proper county auditor in the manner provided by section 11-28.3-09.
4. Manage and conduct the business affairs of the district.
5. Make and execute contracts in the name of and on behalf of the district with regard to a general ~~ambulance~~ emergency medical service program.
6. Purchase or lease ambulances, or other emergency vehicles, supplies, and other real or personal property as shall be necessary and proper to carry out the general ~~ambulance~~ emergency medical service program of the district.
7. Incur indebtedness on behalf of the district within the limits prescribed by section 11-28.3-10, authorize the issuance of evidences of indebtedness permitted under section 11-28.3-10, and pledge any real or personal property owned or acquired by the district as security for the same.
8. Organize, establish, equip, maintain, and supervise an ~~ambulance~~ emergency medical service company to serve the district.
9. Generally perform all acts necessary to fully carry out the purposes of this chapter.

SECTION 3. AMENDMENT. Section 11-28.3-09 of the North Dakota Century Code is amended and reenacted as follows:

11-28.3-09. ~~Ambulance~~ Emergency medical service policy to be determined. The board of directors shall establish a general ~~ambulance~~ emergency medical service policy for the district and shall annually estimate the probable expense for carrying out that policy. The estimate shall be certified by the president and secretary to the proper county auditor or county auditors, on or before June thirtieth of each year. The auditor or auditors shall levy a tax not to exceed five mills upon the taxable property within the district for the maintenance of the ambulance service district for the fiscal year as provided by law. The tax shall be:

1. Collected as other taxes are collected in the county.
2. Turned over to the secretary-treasurer of the rural ambulance service district, who shall be bonded in the amount of at least five thousand dollars.
3. Deposited by the secretary-treasurer in a state or national bank in a district account.
4. Paid out upon warrants drawn upon the district account by authority of the board of directors of the district, bearing the signature of the secretary-treasurer and the countersignature of the president.

In no case shall the amount of the tax levy exceed the amount of funds required to defray the expenses of the district for a period of one year as embraced in the annual

estimate of expense including the amount of principal and interest upon the indebtedness of the district for the ensuing year. The district may include in its operating budget no more than ten percent of its annual operating budget as a depreciation expense to be set aside in a dedicated ambulance emergency medical services sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent ambulance emergency medical services sinking fund may be in addition to the actual annual operating budget, but the total of the annual operating budget and the annual ten percent ambulance emergency medical services sinking fund shall not exceed the approved mill levy.

SECTION 4. AMENDMENT. Section 11-28.3-14 of the North Dakota Century Code is amended and reenacted as follows:

11-28.3-14. Payments by certain organizations. Any property tax-exempt club, lodge, chapter, charitable home, dormitory, state or county fair association, or like organization located within a rural ambulance service district and outside the boundaries of any city shall pay to the board of directors of the district annually for ambulance emergency medical service an amount agreed upon, but not less than twenty-five percent of the amount which would be levied against the property under the provisions of this chapter if the property were subject to levy.

Funds derived from such payments shall be expended by the district for ambulance emergency medical service supplies and equipment and the training of ambulance emergency medical service personnel.

SECTION 5. AMENDMENT. Section 23-12-08 of the North Dakota Century Code is amended and reenacted as follows:

23-12-08. Ambulance Emergency medical service authorized. Any county or municipality of the state of North Dakota, by itself, or in combination with any other county or municipality of the state of North Dakota, may, acting through its governing body, establish, maintain, contract for, or otherwise provide ambulance emergency medical service for such county or municipality; and for this purpose, out of any funds of such county or municipality not otherwise committed, may buy, rent, lease, or otherwise contract for all such vehicles, equipment, or other facilities or services which may be necessary to effectuate such purpose.

SECTION 6. AMENDMENT. Section 23-27-01 of the North Dakota Century Code is amended and reenacted as follows:

23-27-01. Licensing of ambulance emergency medical services operations - Exception - Waiver. ~~No surface ambulance~~

1. The state department of health shall license emergency medical services operations. After June 30, 2001, the department shall limit the issuance of a license for any new emergency medical services operation based on the needs of the service area if the applicant for the new license was licensed before the effective date of this Act and was subsequently relicensed under section 23-27-04.5.
2. Emergency medical services, as hereinafter defined, may not be advertised or, offered, or provided to the public unless the operator of such service the services is licensed as an emergency medical services operation by the state health council department. A license for operators an operator of ambulance service an emergency medical services operation is nontransferable and the operator must be

separately licensed for each ~~ambulance service which he~~ operation that operator operates. Each ~~ambulance service which operation that~~ headquartered or dispatched from a separate location must be considered a separate ambulance service operation; however, an operation with a single headquarters site may dispatch vehicles and personnel from more than one location if calls requesting services are received and orders for vehicle dispatch are made at the single headquarters site.

3. The provisions of this chapter do not apply to an operator from another state who is headquartered at a location outside of this state and transports patients across state lines, but ~~no such the operator will be permitted to~~ may not treat patients within this state or pick up patients within this state for transportation to locations within this state, except as provided through regulations by rule.
4. The state health council shall ~~provide through regulations~~ adopt rules for special licenses and waiver provisions for an operator of a surface ambulance service an emergency medical services operation intended for industrial sites not available to the general public.

SECTION 7. AMENDMENT. Section 23-27-02 of the North Dakota Century Code is amended and reenacted as follows:

23-27-02. Definition of surface ambulance emergency medical services.

For the purpose of this chapter, "surface ambulance emergency medical services" means ~~any use of a publicly or privately owned vehicle upon the streets or highways of this state for the~~ prehospital medical stabilization or transportation of persons who are sick, injured, wounded, or otherwise incapacitated or helpless by any person who either holds himself out to the public for such a as being in that service or who regularly provides such a that service. The term includes basic life support ambulance services, advanced life support ambulance services, air ambulance services, and quick-response unit services.

SECTION 8. AMENDMENT. Section 23-27-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-03. License fees. The fee for a license to operate an emergency medical services operation and perform ambulance emergency medical services must be set by the state health council at a sum of not more than twenty-five dollars annually, as may be required to defray the costs of administration of the licensing program. Individuals providing emergency medical services may not be assessed this license fee. All license fees must be paid to the state department of health and deposited with the state treasurer and credited to the state general fund.

¹²⁸ **SECTION 9. AMENDMENT.** Section 23-27-04 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04. Standards for operators. ~~No surface ambulance service~~ An emergency medical services operation within this state may be operated not operate

¹²⁸ Section 23-27-04 was also amended by section 1 of House Bill No. 1282, chapter 247.

unless the service operation is licensed in accordance with this chapter and ~~regulations promulgated~~ rules adopted by the state health council. The ~~regulations~~ rules must include, ~~but not be limited to,~~ the following:

1. Time when ~~ambulance service shall~~ operator's services must be available.
2. Type of driver's license needed for drivers of ~~ambulance~~ ground vehicles.
3. Training standards for ~~ambulance driver and attendant~~ operation personnel.
4. Equipment ~~needs and equipment certification~~ and ground vehicle standards.
5. Annual license fees.
6. Number of personnel required for each ~~ambulance~~ run.
7. Such other requirements as may be found necessary to carry out the intent of this chapter.

¹²⁹ **SECTION 10. AMENDMENT.** Section 23-27-04.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-04.1. Emergency care or services rendered by officers, employees, or agents of prehospital emergency medical service services operations - Physician medical direction. ~~No~~ Any officer, employee, or agent of ~~any prehospital~~ an emergency medical service services operation and ~~no~~ any physician licensed in this state who provides medical direction to ~~any prehospital~~ an emergency medical service services operation, who is a volunteer, who in good faith renders emergency care, services, or medical direction, is not liable to the recipient of the emergency care, services, or medical direction for any civil damages resulting from any acts or omissions by the person in rendering the emergency care, services, or medical direction provided the person is properly trained according to law. For the purpose of this section, "volunteer" means an individual who receives no compensation or who is paid expenses, reasonable benefits, nominal fees, or a combination of expenses, reasonable benefits, and nominal fees to perform the services for which the individual volunteered, provided that the fees do not exceed twenty-four hundred dollars in any calendar year. For a ~~a~~ volunteer physician ~~physicians~~ providing medical direction to prehospital an emergency medical services operation, the twenty-four hundred dollar maximum fees amount is ~~to be~~ calculated separately for each prehospital emergency medical service services operation for which the physician volunteered medical direction. This section does not relieve a person from liability for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services.

SECTION 11. AMENDMENT. Section 23-27-04.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹²⁹ Section 23-27-04.1 was also amended by section 2 of House Bill No. 1282, chapter 247.

23-27-04.2. Prehospital emergency Emergency medical services - State assistance. The state department of health shall assist in the training of personnel of certain ~~prehospital~~ emergency medical services operations as determined by the department and financially shall assist certain ~~prehospital~~ emergency medical services operations as determined by the department in obtaining equipment. Assistance provided under this section must be within the limits of legislative appropriation. The department shall adopt criteria for eligibility for assistance in the training of personnel of various types of ~~prehospital~~ emergency medical services operations. To qualify for financial assistance for equipment, a ~~prehospital~~ an emergency medical service services operation shall certify, in the manner required by the department, that the service operation has fifty percent of the amount of funds necessary for identified equipment acquisitions. The department shall adopt a schedule of eligibility for financial assistance for equipment. The schedule must provide for a direct relationship between the amount of funds certified and the number of responses during the preceding calendar year for the purpose of rendering medical care, transportation, or both, to individuals who were sick or incapacitated. The schedule must require that as the number of responses increases, a greater amount of funds certified is required. The schedule must classify responses and the financial assistance available for various classifications. The department may establish minimum and maximum amounts of financial assistance to be provided a ~~prehospital~~ to an emergency medical service services operation under this section. If applications for financial assistance exceed the amount of allocated and available funds, the department may prorate the funds among the applicants in accordance with criteria adopted by the department. No more than one-half of the funds appropriated by the legislative assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

SECTION 12. AMENDMENT. Section 23-27-04.3 of the 1999 Supplement to 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. 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. Quality review and improvement information, data, records, and proceedings are not subject to subpoena or discovery or introduction into evidence in any civil action.

SECTION 13. AMENDMENT. Section 23-27-04.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-04.4. Supervision of certified or licensed emergency service hospital personnel. Certified or licensed emergency medical technicians-intermediate and paramedics, who are employed by a hospital and who are working in a nonemergency setting are under the supervision of the hospital's patient services management.

SECTION 14. Section 23-27-04.5 of the North Dakota Century Code is created and enacted as follows:

23-27-04.5. (Effective through June 30, 2003) Quick-response unit service pilot program. The department shall create and implement a pilot program

that creates incentives for basic life support ambulance services and advanced life support ambulance services to convert to quick-response unit services or create quick-response units in areas not already served. During the first year of the program, a maximum of five new quick-response units may receive a one-time five thousand dollar grant under this program and a maximum of twenty converting ambulance services may receive grants in the amount of five thousand dollars each year for a two-year period. During the second year of the program, the department shall distribute any remaining funds to converting ambulance services or to ten additional newly created quick-response units.

¹³⁰ **SECTION 15. AMENDMENT.** Section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

57-15-06.7. Additional levies - Exceptions to tax levy limitations in counties. The tax levy limitations specified in section 57-15-06 do not apply to the following mill levies, which are expressed in mills per dollar of taxable valuation of property in the county:

1. Counties supporting airports or airport authorities may levy a tax not exceeding four mills in accordance with section 2-06-15.
2. Counties levying an additional tax as provided in section 4-02-27.2 may levy a tax not exceeding two mills for a period of not to exceed ten years.
3. Repealed by S.L. 1995, ch. 61, § 14.
4. Counties levying a tax for extension work as provided in section 4-08-15 may levy a tax not exceeding two mills.
5. Counties levying a tax for extension work as provided for in section 4-08-15.1 may levy a tax not exceeding two mills.
6. Counties levying a tax for gopher, rabbit, and crow destruction as provided in section 4-16-02 may levy a tax not exceeding one-half of one mill.
7. Counties levying a tax for payment of a judgment obtained by the state or a state agency against the county in accordance with section 11-11-46 may levy a tax not exceeding one mill.
8. Counties levying a tax for historical works in accordance with section 11-11-53 may levy a tax not exceeding one quarter of one mill, except that if sixty percent of the qualified electors voting on the question of an increase levy as provided in section 11-11-53 shall approve, a tax may be levied not exceeding three quarters of one mill.
9. A county levying a tax for a booster station in accordance with section 11-11-60 may levy a tax not exceeding two mills.

¹³⁰ Section 57-15-06.7 was also amended by section 2 of House Bill No. 1135, chapter 458, and section 1 of House Bill No. 1405, chapter 511.

10. A county levying a tax to pay expenses of the board of county park commissioners in accordance with section 11-28-06 may levy a tax not exceeding one mill.
11. Repealed by S.L. 1999, ch. 154, § 2.
12. A county levying a tax for a county or community hospital association as provided in section 23-18-01 may levy a tax for not more than five years not exceeding eight mills in any one year or, in the alternative, for not more than fifteen years at a mill rate not exceeding five mills.
13. A county levying a tax for a nursing home authority in accordance with section 23-18.2-12 may levy a tax not exceeding five mills.
14. A county levying a tax for county roads as provided in section 24-05-01 may levy a tax not exceeding five mills if approved as provided in that section.
15. A county levying a tax to establish and maintain a public library service as provided in section 40-38-02 may levy a tax not exceeding four mills.
16. A county levying a tax to provide for vocational and on-the-job training services as provided in section 40-57.2-04 may levy a tax not exceeding one mill.
17. A county levying a tax for farm-to-market and federal-aid roads as provided in section 57-15-06.3 may levy a tax not exceeding the levy established by the ballot approved by the electors as provided in that section.
18. A county levying a tax for a county veterans' service officer's salary, traveling, and office expenses in accordance with section 57-15-06.4 may levy a tax not exceeding one and one-fourth mills.
19. A county levying a tax for planning purposes as provided in section 57-15-06.5 may levy a tax not exceeding three mills.
- 19.1. A county levying a tax for regional or county corrections centers according to section 57-15-06.6 may levy a tax not exceeding five mills.
20. A county levying a tax for advertising purposes as provided in section 57-15-10.1 may levy a tax not exceeding one-half mill.
21. A county levying a tax for abandoned cemetery maintenance as provided in section 57-15-27.2 may levy a tax not exceeding one-tenth of one mill.
22. A county levying a tax for emergency purposes as provided in section 57-15-28 may levy a tax not exceeding two mills.
23. A county levying a tax for county ~~ambulance~~ emergency medical service according to section 57-15-50 may levy a tax not exceeding five mills.
24. A county levying a tax for destruction of weeds along highways as provided in section 57-15-54 may levy a tax not exceeding two mills.

25. A county levying a tax for programs and activities for senior citizens according to section 57-15-56 may levy a tax not exceeding two mills.
26. A county levying a tax for county welfare in accordance with section 57-15-57 may levy a tax not exceeding two mills.
27. A county levying a tax to repay a loan according to section 57-47-04 may levy a tax not to exceed three mills.
28. Tax levies made for paying the principal and interest on any obligations of the county evidenced by the issuance of bonds.
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. However, if any city within the county is levying a tax for support of a job development authority or for support of an industrial development organization and the total of the county and city levies exceeds four mills, the county tax levy within the city levying under subsection 28 of section 57-15-10 must be reduced so the total levy in the city does not exceed four mills.
30. Counties levying a tax for county fairs according to section 4-02-26 may levy a tax not exceeding one mill.
31. Counties levying a tax according to section 4-02-27 for a county fair association may levy a tax not exceeding one and one-half mills.
32. Counties levying a tax in accordance with section 4-02-27.1 for a county fair association may levy a tax not exceeding one-half mill.
33. A county levying a tax for programs and activities for handicapped persons according to section 11-11-65 may levy a tax not exceeding one-half mill.
34. Counties levying an annual tax for human services purposes as provided in section 50-06.2-05 may levy a tax not exceeding twenty mills.
35. A county levying a tax for county parks and recreational facilities in accordance with section 57-15-06.9 may levy a tax not exceeding three mills.
36. A county levying a tax for old-age and survivors' insurance according to section 52-09-08, for social security, for an employee retirement program established by the governing body, for county automation and telecommunications under section 57-15-62, or for any combination of those purposes, may levy a tax not exceeding thirty mills. The portion of the levy under this subsection for county automation and telecommunications under section 57-15-62 may not exceed five mills.

Tax levy or mill levy limitations do not apply to any statute which expressly provides that taxes authorized to be levied therein are not subject to mill levy limitations provided by law.

¹³¹ **SECTION 16. AMENDMENT.** Section 57-15-20.2 of the North Dakota Century Code is amended and reenacted as follows:

57-15-20.2. Exceptions to tax levy limitations in townships. The tax levy limitations specified in section 57-15-20 do not apply to the following mill levies, which are expressed in mills per dollar of taxable valuation of property in the township:

1. A township levying a tax for prevention and extinguishment of fires in accordance with section 18-06-10 may levy a tax not exceeding one mill.
2. A township levying a tax to establish a recreation system according to section 40-55-08 may levy a tax not exceeding two and five-tenths mills, except that a township may levy an amount not exceeding eight and five-tenths mills if the provisions of section 40-55-09 are met.
3. A township levying a tax for the purpose of cooperating with the county in constructing and maintaining federal-aid farm-to-market roads in accordance with section 57-15-19.4 may levy a tax not exceeding five mills.
4. A township levying a tax for law enforcement in accordance with section 57-15-19.5 may levy a tax not exceeding five mills.
5. A township levying a tax for mowing or snow removal equipment in accordance with section 57-15-19.6 may levy a tax not exceeding three mills.
- 5.1. A township levying a tax for a legal contingency fund in accordance with section 57-15-22.2 may levy a tax not exceeding ten mills for not to exceed five years.
6. A township levying a tax for airport purposes in accordance with section 57-15-37.1 may levy a tax not exceeding four mills.
7. A township levying a tax for ~~ambulance~~ emergency medical service in accordance with section 57-15-51.1 may levy a tax not exceeding five mills.
8. A township levying a tax for park purposes in accordance with section 58-17-02 may levy a tax not exceeding two mills.

Tax levy or mill levy limitations do not apply to any statute which expressly provides that taxes authorized to be levied therein are not subject to mill levy limitations provided by law.

SECTION 17. AMENDMENT. Section 57-15-50 of the North Dakota Century Code is amended and reenacted as follows:

¹³¹ Section 57-15-20.2 was also amended by section 2 of House Bill No. 1405, chapter 511, section 1 of Senate Bill No. 2328, chapter 553, and section 2 of Senate Bill No. 2334, chapter 513.

57-15-50. Levy authorized for county ambulance emergency medical service. Upon petition of ten percent of the number of qualified electors of the county voting in the last election for governor or upon its own motion, the board of county commissioners of each county shall levy annually a tax not exceeding the limitation in subsection 23 of section 57-15-06.7, for the purpose of subsidizing county ambulance emergency medical services; provided, that this tax must be approved by a majority of the qualified electors of the county voting on the question at a regular or special countywide election. The county may budget, in addition to its annual operating budget for subsidizing ambulance emergency medical service, no more than ten percent of its annual operating budget as a depreciation expense to be set aside in a dedicated ambulance emergency medical services sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent ambulance emergency medical services sinking fund must be in addition to the annual operating budget for subsidization, but the total of the annual operating budget and the annual ten percent ambulance emergency medical services sinking fund may not exceed the approved mill levy. If the county contains a rural ambulance service district or rural fire protection district that levies for and provides ambulance emergency medical service, the property within that district is exempt from the county tax levy under this section upon notice from the governing body of the district to the board of county commissioners of the existence of the district.

¹³² **SECTION 18. AMENDMENT.** Section 57-15-51 of the North Dakota Century Code is amended and reenacted as follows:

57-15-51. Levy authorized for city ambulance emergency medical service. Upon petition of ten percent of the number of qualified electors of the city voting in the last election for governor or upon its own motion, the governing body of each city in this state shall levy annually a tax of not to exceed five mills upon its taxable valuation, for the purpose of subsidizing city ambulance emergency medical services; provided, that such tax must be approved by a majority of the qualified electors of the city voting on the question at a regular or special city election. Whenever a tax for county ambulance emergency medical services is levied by a county, any city levying a tax for, or subsidizing city ambulance emergency medical services, shall upon written application to the county board of such county be exempted from such county tax levy. The city may set aside, as a depreciation expense, up to ten percent of its annual ambulance emergency medical service operating or subsidization budget in a dedicated ambulance emergency medical services sinking fund, deposited with the auditor for replacement of equipment and ambulances. The ten percent ambulance emergency medical services sinking fund may be in addition to the actual annual ambulance emergency medical services budget but the total of the annual ambulance emergency medical services budget and the annual ten percent ambulance emergency medical services fund may not exceed the approved mill levy.

SECTION 19. AMENDMENT. Section 57-15-51.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-51.1. Levy authorized for township ambulance emergency medical service. Pursuant to a vote of sixty percent of the qualified electors voting at the annual township meeting, or at a special election called for that purpose upon

¹³² Section 57-15-51 was also amended by section 4 of House Bill No. 1405, chapter 511.

petition of fifty percent of the number of qualified electors of the township voting in the last election for governor, the board of township supervisors shall levy annually a tax approved by the qualified electors not exceeding the limitation in subsection 7 of section 57-15-20.2 for the purpose of subsidizing township ~~ambulance~~ emergency medical service.

¹³³ **SECTION 20. AMENDMENT.** Subsection 21 of section 58-03-07 of the North Dakota Century Code is amended and reenacted as follows:

21. To direct the transfer of township funds to a rural ambulance service district for ~~ambulance~~ emergency medical service within the township.

SECTION 21. APPROPRIATION. There is appropriated out of any moneys in the health care trust fund, not otherwise appropriated, the sum of \$225,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding the quick-response unit service pilot program, for the biennium beginning July 1, 2001, and ending June 30, 2003. The moneys appropriated must be made available by the office of management and budget as requested by the state department of health to pay for the actual costs of the pilot program.

Approved April 13, 2001
Filed April 16, 2001

¹³³ Section 58-03-07 was also amended by section 4 of Senate Bill No. 2328, chapter 553.

CHAPTER 247

HOUSE BILL NO. 1282

(Representatives Porter, Devlin, Ruby, Severson)
(Senator Lee)

MEDICAL ASSISTANCE REIMBURSEMENTS

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to reimbursements from medical assistance; and to amend and reenact sections 23-27-04 and 23-27-04.1 of the North Dakota Century Code, relating to nonmedically necessary ambulance transports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁴ **SECTION 1. AMENDMENT.** Section 23-27-04 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04. Standards for operators.

1. ~~No~~ A surface ambulance service within this state may not be operated unless the service is licensed in accordance with this chapter and regulations promulgated by the state health council. The regulations must include, ~~but not be limited to,~~ the following:
 - 4- a. Time when ambulance service ~~shall~~ must be available.
 - 2- b. Type of ~~driver's~~ motor vehicle operator's license needed for drivers of an ambulance.
 - 3- c. Training standards for an ambulance driver and attendant.
 - 4- d. Equipment needs and equipment certification.
 - 5- e. Annual license fees.
 - 6- f. Number of personnel required for each ambulance run.
 - 7- g. ~~Such other~~ Other requirements as may be found necessary to carry out the intent of this chapter.
2. An officer, employee, or agent of any prehospital emergency medical service may refuse to transport an individual for which transport is not medically necessary and may recommend an alternative course of action to that individual if the prehospital emergency medical service has developed protocols that include direct medical control to refuse transport of an individual.

¹³⁴ Section 23-27-04 was also amended by section 9 of House Bill No. 1202, chapter 246.

¹³⁵ **SECTION 2. AMENDMENT.** Section 23-27-04.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-27-04.1. Emergency care or services rendered by officers, employees, or agents of prehospital emergency medical service - Physician medical direction. ~~Ne~~

1. An officer, employee, or agent of any prehospital emergency medical service and ~~ne~~ a physician licensed in this state who provides medical direction to any prehospital emergency medical service, who is a volunteer, who in good faith renders emergency care, services, or medical direction, is not liable to the recipient of the emergency care, services, or medical direction for any civil damages resulting from any acts or omissions by the person in rendering the emergency care, services, or medical direction provided the person is properly trained according to law.
2. For the purpose of this section, "volunteer" means an individual who receives no compensation or who is paid expenses, reasonable benefits, nominal fees, or a combination of expenses, reasonable benefits, and nominal fees to perform the services for which the individual volunteered, provided that the fees do not exceed twenty-four hundred dollars in any calendar year.
3. For volunteer physicians providing medical direction to prehospital emergency medical services, the twenty-four hundred dollar maximum fees amount is to be calculated separately for each prehospital emergency medical service for which the physician volunteered medical direction. This section does not relieve a person from liability for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services.
4. An officer, employee, or agent of any prehospital emergency medical service and a physician licensed in this state who provides medical direction to any prehospital emergency medical service who in good faith does not render emergency care, service, or medical direction to an individual based on a determination that transport of that individual to a hospital is not medically necessary is not liable to that individual for damages unless the damages resulted from intoxication, willful misconduct, or gross negligence.

SECTION 3. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

¹³⁵ Section 23-27-04.1 was also amended by section 10 of House Bill No. 1202, chapter 246.

Reimbursement of ambulance services. Medical assistance coverage must include reimbursement of ambulance services for responding to calls to assist covered individuals which do not result in transport. The reimbursement must be at a rate negotiated by the department and the ambulance service.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 248

SENATE BILL NO. 2138

(Human Services Committee)

(At the request of the State Department of Health)

PLASTIC PRODUCTS DEGRADATION AND LABELING

AN ACT to amend and reenact sections 23-32-01 and 23-32-03 of the North Dakota Century Code, relating to plastic products degradation and labeling; and to repeal sections 23-32-02 and 23-32-04 of the North Dakota Century Code, relating to plastic products degradation and labeling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-32-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-32-01. Definitions. As used in ~~sections 23-32-01 through 23-32-04~~ this chapter:

1. "Degradable" means capable of being reduced to environmentally benign subunits under the action of normal environmental forces, including biodegradation, photodegradation, chemical degradation, or hydrolysis within reasonable time lines specific for waste types and waste management methods.
2. "Department" means the state department of health.
3. ~~"Label" means a molded imprint or raised symbol.~~
4. "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.
5. ~~4.~~ 4. "Plastic bottle" means a plastic container that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure, and has a capacity of at least sixteen fluid ounces [453.60 grams] but less than five gallons [18.93 liters].
6. ~~"Rigid plastic container" means any formed or molded container, other than a bottle, intended for single use, composed predominately of plastic resin, and having a relatively inflexible finite shape or form with a capacity of at least eight ounces [226.80 grams] but not more than five gallons [18.93 liters].~~

SECTION 2. AMENDMENT. Section 23-32-03 of the North Dakota Century Code is amended and reenacted as follows:

23-32-03. Plastic bottles and containers - Label - Penalty Rules.

1. All plastic bottles and rigid plastic containers sold in this state after December 31, 1991, must have a label indicating the plastic resin used to produce the bottle or container. The numbers and letters used on the label must be at least one-half inch [12.7 millimeters] high and must

appear on the bottom of the plastic bottle or rigid plastic container. The label must consist of the following numbers, placed inside three triangulated arrows, and letters placed immediately below the three triangulated arrows depending on the plastic resin used. The triangulated arrows must be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow must be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints must depict a clockwise path around the code number. The numbers and letters used must be as follows:

- a. 1 PETE if the product used is polyethylene terephthalate.
 - b. 2 HDPE if the product used is high density polyethylene.
 - c. 3 V if the product used is vinyl.
 - d. 4 LDPE if the product used is low density polyethylene.
 - e. 5 PP if the product used is polypropylene.
 - f. 6 PS if the product used is polystyrene.
 - g. 7 OTHER if the product used is multilayer.
 - h. 8 D if the product used is degradable.
2. The department shall maintain a list of the label code contained in this section and shall provide a copy of the list to any person upon request.
 3. Any person who violates this section is guilty of an infraction.

The department may adopt rules consistent with national or regional standards which relate to the promotion of plastic bottle recycling and the maintenance of safe plastic bottle recycling practices in the state.

SECTION 3. REPEAL. Sections 23-32-02 and 23-32-04 of the North Dakota Century Code are repealed.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 249

HOUSE BILL NO. 1391

(Representatives Wald, Aarsvold, Galvin, Weiler)
(Senators Lindaas, Stenehjem)

PETROLEUM RELEASE REMEDIATION

AN ACT to amend and reenact sections 23-37-01, 23-37-02, 23-37-03, 23-37-04, 23-37-05, 23-37-06, 23-37-07, 23-37-08, 23-37-09, 23-37-10, 23-37-11, 23-37-12, 23-37-13, 23-37-14, 23-37-15, 23-37-16, 23-37-17, 23-37-18, 23-37-19, 23-37-20, 23-37-21, 23-37-22, 23-37-23, 23-37-24, 23-37-25, 23-37-26, 23-37-27, 23-37-28, 23-37-29, and 23-37-30 of the North Dakota Century Code, relating to petroleum release remediation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-37-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-01. (Effective through July 31, 2009 2011) Declaration of purpose. The purpose of this chapter is to establish:

1. A petroleum tank release compensation fund; and
2. A petroleum tank release compensation advisory board authorized to review claims against the fund.

SECTION 2. AMENDMENT. Section 23-37-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-02. (Effective through July 31, 2009 2011) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Actually incurred" means in the case of corrective action expenditures, that the owner, the operator, the landowner, an insurer ~~of the owner or operator~~, or a contractor hired by the owner, operator, or ~~insurer has made a payment or that a contractor~~ the landlord has expended time and materials and that only that person is receiving reimbursement from the fund.
2. "Administrator" means the manager of the state fire and tornado fund.
3. "Board" means the petroleum release compensation ~~advisory~~ board.
4. "Commissioner" means the insurance commissioner.
4. 5. "Corrective action" means an action ~~taken to~~ required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. ~~The term also includes compensation paid to third parties for bodily injury or property damage which is determined by the board to be eligible for reimbursement.~~ The term does not include the repair or replacement of equipment or preconstructed property.

- ~~5.~~ 6. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
- ~~6.~~ 7. "Department" means the state department of health.
- ~~7.~~ 8. "Fund" means the petroleum release compensation fund.
- ~~8.~~ 9. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this chapter.
- ~~9.~~ 10. "Owner" means any person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~40.~~ 11. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.
- ~~44.~~ 12. "Petroleum" means any of the following:
- a. Gasoline and petroleum products as defined in chapter 19-10.
 - b. Constituents of gasoline and fuel oil under subdivision a.
 - c. Oil sludge and oil refuse.
- ~~42.~~ 13. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this chapter, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
- ~~43.~~ 14. "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. The term does not include:
- a. Tanks owned by the federal government.
 - b. Tanks used for the transportation of petroleum.
 - c. A pipeline facility, including gathering lines, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968.
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
 - d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon

application, register the tank and be eligible for reimbursement under this chapter.

- e. A tank used for storing heating oil for consumptive use on the premises where stored.
 - f. A surface impoundment, pit, pond, or lagoon.
 - g. A flowthrough process tank.
 - h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
 - i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.
 - j. A tank used for the storage of propane.
 - k. A tank used to fuel rail locomotives or surface coal mining equipment.
 - l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
15. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action or a person who suffers bodily injury or property damage caused by a petroleum release.

SECTION 3. AMENDMENT. Section 23-37-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-03. (Effective through July 31, 2009 2011) Petroleum release compensation advisory board. The petroleum release compensation advisory board consists of ~~three~~ five members appointed by the governor, ~~two~~ three of whom are active in petroleum marketing, ~~appointed by the governor~~ one of whom is active in the petroleum, crude oil, or refining industry, and one of whom is active in the insurance industry. A member active in petroleum marketing must be appointed from a list of three recommended by the North Dakota retail petroleum marketers association. A member active in the petroleum, crude oil, or refining industry must be appointed from a list of three recommended by the North Dakota petroleum council. A member active in the insurance industry must be appointed from a list of three recommended by the North Dakota professional insurance agents association. Members must be appointed to terms of three years with the terms arranged so that the term of at least one member, but no more than two members, expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board ~~shall~~ is entitled to receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as are allowed to other state officers.

SECTION 4. AMENDMENT. Section 23-37-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-04. (Effective through July 31, 2009 2011) Administration of fund - Staff. The administrator shall administer the fund according to this chapter. The administrator shall convene the board as is may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the administrator regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the administrator which may be appealed to the board, and to discuss all claims against the fund. The administrator may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the administrator regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the administrator. The claimant or the administrator may appeal the board's decision to the commissioner. The decision of the commissioner may be appealed under chapter 28-32.

SECTION 5. AMENDMENT. Section 23-37-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-05. (Effective through July 31, 2009 2011) Adoption of rules. The administrator shall adopt rules regarding its the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, and procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the administrator, and any other rules as may be appropriate to administer this chapter.

SECTION 6. AMENDMENT. Section 23-37-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-06. (Effective through July 31, 2009 2011) Release discovery. If the department has reason to believe a release has occurred, it shall notify the administrator. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 7. AMENDMENT. Section 23-37-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-07. (Effective through July 31, 2009 2011) Owner or operator not identified. The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

SECTION 8. AMENDMENT. Section 23-37-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-08. (Effective through July 31, 2009 2011) Imminent hazard. Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

SECTION 9. AMENDMENT. Section 23-37-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-09. (Effective through July 31, 2009 2011) Duty to notify. ~~Nothing in this~~ This chapter limits does not limit any person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this chapter.

SECTION 10. AMENDMENT. Section 23-37-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-10. (Effective through July 31, 2009 2011) Providing of information. Any person whom the administrator or the department has reason to believe is an owner or operator, ~~or~~ the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning a release, shall, if requested by the administrator or the department, or any member, employee, or agent of the administrator or the department, furnish to the administrator or the department any information that person has or may reasonably obtain that is relevant to the release.

SECTION 11. AMENDMENT. Section 23-37-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-11. (Effective through July 31, 2009 2011) Examination of records. Any employee of the administrator or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the administrator or the department under section 23-37-10; and
2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 23-37-10, conducting surveys and investigations, and taking corrective action.

SECTION 12. AMENDMENT. Section 23-37-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-12. (Effective through July 31, 2009 2011) Responsibility for cost. The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases, ~~and for legal actions of the administrator or the department.~~ This chapter does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

SECTION 13. AMENDMENT. Section 23-37-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-13. (Effective through July 31, 2009 2011) Liability avoided. No owner or operator may avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, ~~the provisions of this chapter do~~ does not:

1. Prohibit a person who may be liable from entering into an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a ~~cause of action~~ claim for relief brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

SECTION 14. AMENDMENT. Section 23-37-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-14. (Effective through July 31, 2009 2011) Other remedies. ~~Nothing in this~~ This chapter limits does not limit the powers of the administrator or department, or ~~precludes~~ preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted in order to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

SECTION 15. AMENDMENT. Section 23-37-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-15. (Effective through July 31, 2009 2011) Revenue to the fund. Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 23-37-17;
2. Any money recovered by the fund under section 23-37-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the administrator in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 16. AMENDMENT. Section 23-37-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-16. (Effective through July 31, 2009 2011) Penalty. A tank owner violating section 23-37-17 is guilty of a class B misdemeanor, unless another penalty is specifically provided.

SECTION 17. AMENDMENT. Section 23-37-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-17. (Effective through July 31, 2009 2011) Registration fee. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If on the first day of July in any year the amount of money in the petroleum release compensation fund is less than ~~five~~ six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If on the first day of July in any year

the amount of money in the petroleum release compensation fund is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. Annual registration fees must be reduced to five dollars if on the first day of July in any year the amount of money in the fund exceeds nine million dollars. Annual registration fees must continue at the fee of five dollars until the money in the fund does not exceed nine million dollars. An owner or operator of a tank that was required to be registered by law on or before July 1, ~~1999~~ 2001, shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank owned or operated by that person for any previous years that the tank was required to be registered for which a fee was not paid. The registration fees collected under this section must be paid to the administrator for deposit in the state treasury for credit to the petroleum release compensation fund.

SECTION 18. AMENDMENT. Section 23-37-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-18. (Effective through July 31, ~~2009~~ 2011) Reimbursement for corrective action.

1. The administrator shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the administrator determines that:
 - ~~1-~~ a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility which were in effect at the time of the release;
 - ~~2-~~ b. The department was given notice of the release as required by federal and state law;
 - ~~3-~~ c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 4. d. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:

- a. Findings reduced to judgment in federal or state district court within the state of North Dakota or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party;
or
 - c. A written settlement entered into by the parties in which the commissioner or the commissioner's agent has participated. The settlement must be reviewed and approved by the commissioner.
4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.
 5. The fund may not compensate for attorneys' fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
 6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
 7. The fund shall reimburse the department for all costs, attorneys' fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any monies reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

SECTION 19. AMENDMENT. Section 23-37-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-19. (Effective through July 31, 2009 2011) Application for reimbursement. Any owner or operator who is a first-party claimant who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administrator for partial or full reimbursement under section 23-37-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

SECTION 20. AMENDMENT. Section 23-37-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-20. (Effective through July 31, 2009 2011) Administrator to determine costs. A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually

incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

SECTION 21. AMENDMENT. Section 23-37-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-21. (Effective through July 31, 2009 2011) Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

SECTION 22. AMENDMENT. Section 23-37-22 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-22. (Effective through July 31, 2009 2011) Reimbursement not subject to attachment. The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party who performed the corrective action.

SECTION 23. AMENDMENT. Section 23-37-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-23. (Effective through July 31, 2009 2011) Recovery of expenses. Any reasonable and necessary expenses incurred by the fund, which exceed the ~~amount allowed by~~ coverage limits provided by section 23-37-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the administrator against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 24. AMENDMENT. Section 23-37-24 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-24. (Effective through July 31, 2009 2011) Costs exceeding reimbursement. If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the administrator or the department from the federal government, the administrator may pay the department the cost of the corrective actions, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 25. AMENDMENT. Section 23-37-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-25. (Effective through July 31, 2009 2011) Coordination of benefits. If an owner or operator has an insurance policy that provides the same coverage as the fund, the administrator of the fund shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

SECTION 26. AMENDMENT. Section 23-37-26 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-26. (Effective through July 31, 2009 2011) Third-party damages - Participation in actions and review of settlements.

1. An owner or operator who is sued for damages resulting from a release shall notify the administrator within ~~forty-eight hours~~ fourteen days of being served with a summons and complaint. The owner or operator shall also advise the administrator if any insurer is defending the owner or operator and provide to the administrator the name of that insurer.
2. An owner or operator who, before litigation, enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the administrator within ~~forty-eight hours~~ fourteen days of the demand or the negotiations.
3. The administrator and the board shall review the conduct of any litigation or negotiation. The administrator may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The administrator and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

SECTION 27. AMENDMENT. Section 23-37-27 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-27. (Effective through July 31, 2009 2011) Third-party damages - Documentation.

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment; and abstract of costs; and a declaration of the fees paid by the defendant to each attorney who appeared in the proceeding.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and such supporting documents as may be required by the administrator.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and such supporting documents as may be required by the administrator.
4. The administrator and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report be submitted to the administrator. The administrator may require a third party who claims property damage to permit a property appraiser or claims adjuster retained by the administrator to inspect the property and report to the administrator.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property

damage against an owner, operator, or dealer covered registered by the fund; excluding claims for punitive damages or damages for criminal acts.

6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, ~~the maximum liability allowed per person under subsection 2 of section 32-12.2-02~~ one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23-37-18.
8. A third party may not bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

SECTION 28. AMENDMENT. Section 23-37-28 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-28. (Effective through July 31, 2009 2011) Matching federal funds.

The administrator and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the administrator and the board determine the allowance appropriate.

SECTION 29. AMENDMENT. Section 23-37-29 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-29. (Effective through July 31, 2009 2011) Fund appropriations.

Money in the fund is continuously appropriated to the administrator for the purpose of making reimbursements under this chapter.

SECTION 30. AMENDMENT. Section 23-37-30 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-37-30. (Effective through July 31, 2009 2011) Investment of fund.

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The commissioner may purchase a contract for reinsurance of any risk to be paid by the fund. The administrator may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

CHAPTER 250

SENATE BILL NO. 2380

(Senators Holmberg, Heitkamp, Schobinger)
(Representatives Delmore, Devlin, Price)

COMMUNITY HEALTH GRANT PROGRAM

AN ACT to provide for a community health grant program; to provide an appropriation; to provide a continuing appropriation; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Community health grant program.

1. The state department of health shall establish a community health grant program. The primary purpose of the program is to prevent or reduce tobacco usage in the state by strengthening community-based public health programs and by providing assistance to public health units and communities throughout the state. The program must build on and may not duplicate existing programs. Grants awarded under the program must be awarded on a noncompetitive basis using the per capita formula provided for in this subsection. The program must, to the extent funding is available, follow guidelines concerning tobacco prevention programs recommended by the centers for disease control and prevention. Entities awarded grants under the program may contract with or award grants to private providers that conduct tobacco cessation programs. Not more than five percent of the community health grant program funds may be expended for surveillance and evaluation activities. Funds appropriated for the program must be allocated as follows:
 - a. Forty percent of all funds appropriated for the program must be granted to a public health unit or to cooperating public health units that have an agreement with school boards concerning preventive health programs to be funded. The program must be developed with student participation and must include a plan to reduce student tobacco use.
 - b. Forty percent of all funds appropriated for the program must be granted to a public health unit or to cooperating public health units that have established a unitwide plan, developed in cooperation with local elected officials in the unit's jurisdiction, concerning the preventive health programs to be funded. The plan must address programs to reduce tobacco use by the residents living in the counties serviced by the units; however, the plan may include other chronic disease programs. In addition to any grants received under this subdivision, each county with a population of less than ten thousand must receive five thousand dollars per biennium to be used to implement the county's programs.
 - c. Twenty percent of all funds appropriated for the program must be granted to public health units to supplement existing state aid from

other sources. Each unit must receive one percent of the amount allocated under this subdivision for each county within the unit and the remaining amount must be distributed to each unit on a per capita basis.

2. The state department of health, in establishing the community health grant program, shall build upon the state's existing tobacco control grant program activities and shall follow the centers for disease control and prevention's best practices for comprehensive tobacco control programs. The department shall encourage applicants to monitor program accountability with respect to tobacco-related behaviors, attitudes, and health outcomes and to include in their plans:
 - a. Community programs that:
 - (1) Engage youth in the development and implementation of interventions;
 - (2) Develop partnerships with local organizations;
 - (3) Conduct educational programs at local levels;
 - (4) Promote government and voluntary health policies, such as clean indoor air, youth access, and treatment coverage;
 - (5) Restrict minors' access to tobacco; and
 - (6) Deter smoking in public places.
 - b. Promotion of school programs by partnering with public health organizations, school boards, education associations, and other organizations in each county to provide school programs that promote:
 - (1) Tobacco-free policies;
 - (2) Evidence-based curricula;
 - (3) Teacher training;
 - (4) Parental involvement; and
 - (5) Cessation services for students and staff.

SECTION 2. 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 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 to the legislative council regarding the implementation of the program not later than December 31, 2001, and November 1, 2002. 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 3. Gifts, grants, and donations - Continuing appropriation. The state department of health and public health units may accept any gifts, grants, or donations, whether conditional or unconditional. The department of health or public health units may contract public or private entities and may expend any available moneys to obtain matching funds for the purposes of this Act. All moneys received by the state department of health as gifts, grants, or donations under this section are appropriated on a continuing basis to the state department of health.

SECTION 4. 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, 2001, and ending June 30, 2003.

SECTION 5. APPROPRIATION. There is appropriated out of any moneys in the community health trust fund, not otherwise appropriated, the sum of \$250,000, 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 on a dollar-for-dollar matching fund basis for city and county employee tobacco education and cessation programs, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 6. ALCOHOL, TOBACCO, AND DRUG ABUSE PROGRAMS - LEGISLATIVE COUNCIL STUDY. During the 2001-02 interim, the legislative council shall consider studying the programs that deal with the prevention and treatment of alcohol, tobacco, and drug abuse and other kinds of risk-associated behavior which are operated by various state agencies, including the department of corrections and rehabilitation, the attorney general, the state department of health, the department of human services, the department of public instruction, the department of transportation, the national guard, and the supreme court, and whether better coordination among the programs within those agencies may lead to a more effective and cost-efficient way of operating the programs and providing services. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 28, 2001
Filed April 28, 2001

HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 251

SENATE BILL NO. 2224

(Senators Nichols, O'Connell, Solberg)
(Representatives Delzer, Onstad, Solberg)

NO-MOW AREA HAYING

AN ACT to create and enact a new section to chapter 24-01 of the North Dakota Century Code, relating to haying of no-mow areas; to provide for a report to the legislative assembly; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-01 of the North Dakota Century Code is created and enacted as follows:

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 2. NO-MOW AREAS - REPORT TO LEGISLATIVE ASSEMBLY. The director of the department of transportation shall work with the appropriate state and federal agencies to evaluate reasonable and appropriate environmental mitigation options and alternatives. The director shall submit a plan to the fifty-eighth legislative assembly to eliminate areas designated as no-mow or managed-mow areas from the right of way adjacent to highways under the department's jurisdiction.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act becomes effective on January 1, 2004.

Approved April 18, 2001

Filed April 18, 2001

CHAPTER 252

HOUSE BILL NO. 1186

(Transportation Committee)

(At the request of the Department of Transportation)

DISABLED MILEAGE REIMBURSEMENT RATES

AN ACT to amend and reenact section 24-02-03.3 of the North Dakota Century Code, relating to mileage reimbursement rates for disabled state employees driving specially equipped vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁶ **SECTION 1. AMENDMENT.** Section 24-02-03.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. The director shall establish within the department a central vehicle management system to regulate the operation, maintenance, and management of all motor vehicles owned or leased by the state subject to registration under chapters 39-04 and 39-05. Upon the request of a state agency and an agreement between the agency and director for the use of the motor vehicle-related equipment, the director may purchase or lease motor vehicle-related equipment and include that equipment within the system. The director shall provide a uniform method of documenting the use and cost of operation of motor vehicles and motor vehicle-related equipment in the system. The director shall advise the director of the office of management and budget as to the need to acquire or dispose of system motor vehicles. The specifications for highway patrol vehicles to be acquired may be set by the highway patrol superintendent. Every state agency, institution, department, board, bureau, and commission unless exempted by the director must use the system.
2. The director may enter into an agreement with a state employee who has a disability requiring a specially-equipped vehicle to pay a mileage rate greater than the rate established in section 54-06-09 for the employee's use of the employee's specially-equipped motor vehicle while conducting state business. The rate must be based on the rate provided in section 54-06-09, increased by the actual cost per mile caused by the special equipment, and may not exceed the cost associated with the special equipment expressed as the new value plus the depreciated fair market value in eight years divided by two, divided by ~~forty~~ twenty thousand miles.

¹³⁶ Section 24-02-03.3 was also amended by section 1 of House Bill No. 1147, chapter 473.

3. Each entity required to use the system shall submit records of the operation of each vehicle as directed by the director.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 253

HOUSE BILL NO. 1167

(Transportation Committee)

(At the request of the Department of Transportation)

DOT EDUCATIONAL FINANCIAL AID

AN ACT to amend and reenact section 24-02-42 of the North Dakota Century Code, relating to the amount of department of transportation educational financial aid and to expand eligible areas of study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-42 of the North Dakota Century Code is amended and reenacted as follows:

24-02-42. Engineering, management, and technician scholarships Scholarships authorized. The ~~commissioner~~ director is ~~hereby~~ authorized to establish ~~not over sixteen~~ continuing grants of financial aid for study in ~~civil engineering, civil engineering technology, construction engineering, construction management, and industrial drafting and design technology~~ undergraduate coursework, which meets the needs and mission of the department, at institutions of higher learning in this state. Expenditure of not over ~~ten~~ twenty thousand dollars annually from highway operating funds is ~~hereby~~ authorized. No individual may receive financial aid in any year exceeding ~~one~~ two thousand dollars nor a total exceeding ~~three~~ six thousand dollars and an executed contract of employment is a prerequisite. Before any student shall receive the ~~benefits~~ financial aid authorized by this section the student shall enter into a contract with the department, which must provide that such student shall upon graduation accept employment with the department for a period of time at least equal to the time the student received financial aid benefits, the salary to be in the grade established for the classification assigned. In the event such student is inducted into the armed forces before graduation, such education may then be completed upon that student's return to civil life, and in the event such induction into the armed services is made after graduation the employment contract does not take effect until after such period of service in the armed forces has been completed. Leave of absence without pay will be granted to one whose induction occurs during the period of the life of such contract and the employment will be resumed for the balance of the contract period after such employee has been discharged from the service.

If such student fails to graduate with a degree, or fails to accept employment with the department as above provided, such student shall repay the department, with interest at the rate of six percent per annum, all sums received by the student in financial aid benefits under the contract herein provided, such repayment to be made within a period equal to the time the student received such benefits. For the purpose of this section defenses of minority or statute of limitations are ~~hereby~~ removed as to any applicant granted a loan by the ~~commissioner~~ director and such contracts are in all respects legal and binding. Salary increases to employees having received financial aid by virtue of this section must be based on the same considerations as other ~~engineers~~ employees employed by the department.

The ~~commissioner~~ director, with the cooperation and concurrence of the board of higher education, shall prescribe rules for determining the selection of recipients, qualifications, and courses of study. Such rules may cover any areas as may be necessary to assure a source of qualified ~~technically~~ trained employees for the department.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 254

SENATE BILL NO. 2112

(Appropriations Committee)
(At the request of the Governor and the Office of
Management and Budget)

DOT DISASTER FUNDS

AN ACT to authorize the department of transportation to borrow funds to respond to disasters; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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. 105-178]. 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 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 6, 2001
Filed March 6, 2001

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 255

HOUSE BILL NO. 1415

(Representatives Disrud, Keiser)
(Senators D. Mathern, Tallackson)

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 a needs assessment and 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 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.2-03.1. (Effective through June 30, ~~2004~~ 2003) 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.

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, ~~2004~~ 2003) 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.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 2003, and after that date is ineffective.

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

Approved April 27, 2001
Filed April 27, 2001

CHAPTER 256

SENATE BILL NO. 2034 (Legislative Council) (Criminal Justice Committee)

SEXUAL PREDATOR CIVIL COMMITMENT

AN ACT to create and enact three new sections to chapter 25-03.3 and a new subsection to section 25-03.3-17 of the North Dakota Century Code, relating to the referral of inmates for civil commitment and rulemaking; and to amend and reenact sections 25-03.3-01, 25-03.3-02, 25-03.3-03, 25-03.3-07, 25-03.3-08, subsection 2 of section 25-03.3-09, sections 25-03.3-10, 25-03.3-11, 25-03.3-12, 25-03.3-13, subsection 1 of section 25-03.3-17, subsection 1 of section 25-03.3-18, and section 25-03.3-19 of the North Dakota Century Code, relating to the civil commitment of sexual predators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Committed individual" means an individual committed for custody and treatment pursuant to this chapter.
2. "Executive director" means the executive director of the department of human services or the executive director's designee.
3. "Mental retardation" means mental retardation as defined in the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fourth edition (1994).
4. "Qualified expert" means an individual who has an expertise in sexual offender evaluations and who is a psychiatrist or psychologist trained in a clinical program and licensed pursuant to this state's law or a psychologist approved for exemption by the North Dakota board of ~~psychology~~ psychologist examiners. For purposes of evaluating an individual with mental retardation, the qualified expert must have specialized knowledge in sexual offender evaluations of individuals with mental retardation.
4. 5. "Respondent" means an individual subject to a commitment proceeding pursuant to this chapter.
- ~~5.~~ 6. "Sexual act" means sexual contact between human beings, including contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or the vulva and the vulva; or the use of an object that comes in contact with the victim's anus, vulva, or penis. Sexual contact between the penis and the vulva, or between the penis and the anus, or an object and the anus, vulva, or

penis of the victim, occurs upon penetration, however slight. Emission is not required.

- 6- 7. "Sexual contact" means any touching of the sexual or other intimate parts of an individual for the purpose of arousing or satisfying sexual or aggressive desires.
- 7- 8. "Sexually dangerous individual" means an individual who is shown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others. It is a rebuttable presumption that sexually predatory conduct creates a danger to the physical or mental health or safety of the victim of the conduct. The term does not include an individual with For these purposes, mental retardation is not a sexual disorder, personality disorder, or other mental disorder or dysfunction.
- 8- 9. "Sexually predatory conduct" means:
- a. Engaging or attempting to engage in a sexual act or sexual contact with another individual, or causing or attempting to cause another individual to engage in a sexual act or sexual contact, if:
 - (1) The victim is compelled to submit by force or by threat of imminent death, serious bodily injury, or kidnapping directed toward the victim or any human being, or the victim is compelled to submit by any threat that would render an individual of reasonable firmness incapable of resisting;
 - (2) The victim's power to appraise or control the victim's conduct has been substantially impaired by the administration or employment, without the victim's knowledge, of intoxicants or other means for purposes of preventing resistance;
 - (3) The actor knows or should have known that the victim is unaware that a sexual act is being committed upon the victim;
 - (4) The victim is less than fifteen years old;
 - (5) The actor knows or should have known that the victim ~~suffers from~~ has a mental disease or defect disability that renders substantially impairs the ~~victim incapable of~~ victim's understanding of the nature of the sexual act or contact;
 - (6) The victim is in official custody or detained in a ~~hospital treatment facility, health care facility, prison~~ correctional facility, or other institution and is under the supervisory authority ~~of,~~ disciplinary control, or care of the actor; or
 - (7) The victim is a minor and the actor is an adult; or

b. Engaging in or attempting to engage in sexual contact with another individual or causing or attempting to cause another individual to have sexual contact, if:

(1) The actor knows or should have known that the contact is offensive to the victim; or

(2) The victim is a minor, fifteen years of age or older, and the actor is the minor's parent, guardian, or is otherwise responsible for general supervision of the victim's welfare.

~~9.~~ 10. "Should have known" means a reasonable individual without a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction in the actor's circumstances would have known.

~~40.~~ 11. "Superintendent" means the superintendent of the state hospital or the superintendent's designee.

~~44.~~ 12. "Treatment facility" means any hospital, including the state hospital, or any treatment facility ~~that~~, including the developmental center at westwood park, Grafton, which can provide directly, or by direct arrangement with other public or private agencies, evaluation and treatment of sexually dangerous individuals.

SECTION 2. AMENDMENT. Section 25-03.3-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-02. Jurisdiction and venue. The district court has original jurisdiction over the proceedings governed by this chapter. A proceeding pursuant to this chapter ~~must~~ may be tried in ~~the~~ any county in which the respondent resides or is located, or has committed any sexually predatory conduct, or if the respondent is an inmate, any of the foregoing venues or a county to which the respondent has indicated an intent to relocate upon release from the correctional facility.

SECTION 3. AMENDMENT. Section 25-03.3-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-03. Sexually dangerous individual - Petition.

1. If it appears that an individual is a sexually dangerous individual, the state's attorney may file a petition in the district court alleging that the individual is a sexually dangerous individual and stating sufficient facts to support the allegation.

2. Except for an order of the court committing a respondent for treatment or an order of the court discharging an individual from treatment and as provided in this section, the petition and all further records and proceedings under this chapter are confidential and are not public records or proceedings under sections 44-04-18 and 44-04-19 and sections 5 and 6 of article XI of the Constitution of North Dakota. The court may permit access to a respondent's records or proceedings under this chapter to the respondent's guardian, guardian ad litem, or other similarly situated individual. The court may permit access to information in the respondent's records to other individuals who require the information for use in performing official governmental duties.

SECTION 4. A new section to chapter 25-03.3 of the North Dakota Century Code is created and enacted as follows:

Referral of inmates to state's attorneys - Immunity.

1. The department of corrections and rehabilitation shall maintain treatment records for any inmate who has been convicted of an offense that includes sexually predatory conduct. Approximately six months before the projected release date of the inmate, the department shall complete an assessment of the inmate to determine whether a recommendation is to be made to a state's attorney for civil commitment of the inmate under this chapter. The assessment must be based on actuarial and clinical evaluations or any other information determined by the director to be relevant, including inmate behavior and whether the inmate participated in sexual offender treatment while incarcerated.
2. If, upon the completion of the assessment, the department determines the inmate may meet the definition of a sexually dangerous individual, the department shall refer the inmate to a state's attorney of an appropriate county as provided for in section 25-03.3-02. The department may make a referral of an inmate to more than one county.
3. Any referral from the department must include a summary of the factors considered material to the determination that the inmate is appropriate for referral. The department shall provide a copy of the referral and summary to the attorney general and the superintendent of the developmental center and the state hospital.
4. Following the receipt of a referral but before the release date of the inmate, the state's attorney shall notify the department and the attorney general of the state's attorney's intended disposition of the referral.
5. Any person participating in good faith in the assessment and referral of an inmate is immune from any civil or criminal liability. For the purpose of any civil or criminal proceeding, the good faith of any person required to participate in the assessment and referral of an inmate is presumed.

SECTION 5. AMENDMENT. Section 25-03.3-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-07. Appointment of guardian ad litem. At any stage of a proceeding under this chapter, on application of a ~~party~~ any individual or on its own motion, the court may appoint a guardian ad litem for a minor or an individual with mental retardation who is a respondent or witness or otherwise involved in the proceeding, if the minor or an individual with mental retardation has no parent, guardian, or custodian appearing on the minor's or the mentally retarded individual's behalf or the interests of those persons conflict with those of the minor or an individual with mental retardation. The department of human services shall pay the expense of the guardian ad litem fee as established by the court.

SECTION 6. AMENDMENT. Section 25-03.3-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-08. Sexually dangerous individual - Procedure on petition - Detention.

1. Upon the filing of a petition pursuant to this chapter, the court shall determine whether to issue an order for detention of the respondent named in the petition. The petition may be heard ex parte. The court shall issue an order for detention if there is cause to believe that the respondent is a sexually dangerous individual. If the court issues an order for detention, the order must direct that the respondent be taken into custody and transferred to an appropriate treatment facility ~~to be held for evaluation and~~ or local correctional facility to be held for subsequent hearing pursuant to this chapter. Under this section, the department of human services shall pay for any expense incurred in the detention or evaluation of the respondent.
2. If the state's attorney knows or believes the respondent named in the petition is an individual with mental retardation, the state's attorney shall notify the court in the petition and shall advise the court of the name of the legal guardian of the respondent or, if none is known, the court may appoint a guardian ad litem for the respondent. Before service of the notice required in section 25-03.3-10, the court shall appoint an attorney for the respondent. An individual with mental retardation may be detained in a correctional facility before the probable cause hearing only when no other secure facility is accessible, and then only under close supervision.

SECTION 7. AMENDMENT. Subsection 2 of section 25-03.3-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. After consultation with counsel, the respondent may waive the right to counsel or the right to any hearing provided pursuant to this chapter by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and ~~be signed by the respondent's counsel for the respondent~~ shall separately certify that counsel has explained to the respondent the proceedings, the legal and factual issues, potential defenses, the burden of proof, and possible outcomes of the proceedings. No guardian, guardian ad litem, attorney, or other individual may waive the right to counsel on behalf of an individual with mental retardation.

SECTION 8. AMENDMENT. Section 25-03.3-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-10. Notice. If a respondent is detained pursuant to section 25-03.3-08, the state's attorney shall provide the respondent, or the respondent's guardian, if appropriate, with a copy of the petition filed with the court. The state's attorney shall provide the respondent with written notice of the respondent's right to a preliminary hearing and a commitment hearing, if probable cause is found to exist; the right to counsel and that counsel will be appointed for the respondent, if the respondent is indigent; and the right to have an expert of the respondent's choosing conduct an evaluation and testify on the respondent's behalf or, if the respondent is indigent, that the court will appoint a qualified expert for the respondent. The notice must state the date, time, and place for the preliminary hearing. If notice is given to a respondent who the state's attorney knows or believes is an individual with mental retardation, the state's attorney also shall give notice to the respondent's attorney, guardian, and guardian ad litem, if any.

SECTION 9. AMENDMENT. Section 25-03.3-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-11. Preliminary hearing - Probable cause. The respondent is entitled to a preliminary hearing within seventy-two hours of being taken into custody pursuant to an order of the court, excluding weekends and holidays, unless the respondent ~~chooses to waive~~ knowingly waives the preliminary hearing pursuant to section 25-03.3-09. The respondent has a right to be present, to testify, and to present and cross-examine witnesses at any preliminary hearing. The court may receive evidence that would otherwise be inadmissible at a commitment hearing. Every individual not necessary must be excluded, except that the court may admit any individual having a legitimate interest in the proceeding. If the court determines after a preliminary hearing that there is probable cause to believe the respondent is a sexually dangerous individual, the court shall order that the respondent be transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. If the court determines that probable cause does not exist to believe that the respondent is a sexually dangerous individual, the court shall dismiss the petition. If the respondent waives the preliminary hearing, then the respondent must be immediately transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. An individual with mental retardation may be evaluated under this chapter at a facility only if that facility provides care and treatment to individuals with mental retardation.

SECTION 10. AMENDMENT. Section 25-03.3-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-12. Sexually dangerous individual - Evaluation. The evaluation must be conducted by one or more experts chosen by the executive director. Whenever a respondent is subject to an evaluation pursuant to this chapter, the respondent may retain an expert to perform an evaluation or testify on the respondent's behalf. When the respondent is an adult with mental retardation and a guardian or guardian ad litem has not been appointed for the respondent, the court shall appoint an expert to perform an evaluation on behalf of the respondent. In the case of a respondent who is indigent, the court shall appoint a qualified expert to perform an examination or participate in the commitment proceeding on the respondent's behalf. The department of human services shall compensate any qualified expert appointed by the court on behalf of an indigent respondent in a reasonable amount based on time and expenses. An expert retained on behalf of the respondent must have reasonable access to the respondent for the purpose of the examination and to all relevant medical, psychological, and court records and reports.

SECTION 11. AMENDMENT. Section 25-03.3-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-13. Sexually dangerous individual - Commitment proceeding - Report of findings. Within ~~thirty~~ sixty days after the finding of probable cause, the court shall conduct a commitment proceeding to determine whether the respondent is a sexually dangerous individual. The court may extend the time for good cause. At the commitment proceeding, any testimony and reports of an expert who conducted an examination are admissible, including risk assessment evaluations.

Any proceeding pursuant to this chapter must be tried to the court and not a jury. At the commitment proceeding, the state's attorney shall present evidence in support of the petition and the burden is on the state to show by clear and convincing evidence that the respondent is a sexually dangerous individual. An individual may not be committed unless evidence is admitted establishing that at least two experts have concluded the individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct. The respondent has a right to be present, to testify, and to present and cross-examine witnesses. Every person not necessary must be excluded, except that the court may admit any person having a legitimate interest in the proceeding. If the respondent is found to be a sexually dangerous individual, the court shall commit the respondent to the care, custody, and control of the executive director. The executive director shall place the respondent in an appropriate facility or program at which treatment is available. The appropriate treatment facility or program must be the least restrictive available treatment facility or program necessary to achieve the purposes of this chapter. The executive director may not be required to create a less restrictive treatment facility or treatment program specifically for the respondent or committed individual. Unless the respondent has been committed to the legal and physical custody of the department of corrections and rehabilitation, the respondent may not be placed at and the treatment program for the respondent may not be provided at the state penitentiary or an affiliated penal facility. If the respondent is found not to be a sexually dangerous individual, the court shall discharge the respondent.

SECTION 12. AMENDMENT. Subsection 1 of section 25-03.3-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A committed individual must remain in the care, custody, and control of the executive director until, in the opinion of the executive director, the individual is safe to be at large ~~and has received the maximum benefit of treatment.~~

SECTION 13. A new subsection to section 25-03.3-17 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

If the executive director moves a committed individual from a placement in the community to a placement in a secure treatment facility that is more restrictive, the committed individual may challenge the move at a hearing to be held within thirty days after the move in accordance with procedures established by the department of human services.

SECTION 14. AMENDMENT. Subsection 1 of section 25-03.3-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Annually, the executive director shall provide the committed individual with written notice that the individual has a right to petition the court for discharge. The notice must explain to the committed person when the committed person has a right to a hearing on the petition. The notice must inform the committed person of the rights this chapter affords the committed person at a discharge hearing. The executive director shall forward a copy of the notice to the committing court. If the committed individual is mentally retarded, the executive director shall also provide

the written notice to the individual's attorney, guardian, and guardian ad litem, if any.

SECTION 15. AMENDMENT. Section 25-03.3-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-19. Appeal. The respondent has the right to an appeal from an order of commitment or an order denying a petition for discharge. Upon entry of an appealable order, the court shall notify the respondent of the right to appeal and the right to counsel. The notice of appeal must be filed within thirty days after entry of the order. The appeal must be limited to a review of the procedures, findings, and conclusions of the committing court. Pending a decision on appeal, the order appealed from remains in effect. If the respondent is a mentally retarded individual, the court shall provide notice of the right to appeal to the respondent's attorney, the respondent's guardian, and guardian ad litem.

SECTION 16. A new section to chapter 25-03.3 of the North Dakota Century Code is created and enacted as follows:

Rules. The department of human services may adopt rules under chapter 28-32 to implement this chapter, but the rules may not restrict or limit the rights guaranteed by this chapter.

SECTION 17. A new section to chapter 25-03.3 of the North Dakota Century Code is created and enacted as follows:

Individual rights. For so long as a committed individual is placed in and resides at a treatment facility, the committed individual has the same rights as other residents of the facility, subject to the following limitations and restrictions:

1. The individual's rights are subordinate to legitimate safety precautions and to the terms of the applicable individualized habilitation or treatment plan.
2. If an individual's rights are inconsistent with this chapter in a particular situation, the specific provisions of this chapter prevail.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 257

HOUSE BILL NO. 1038

(Legislative Council)

(Budget Committee on Institutional Services)

NORTH DAKOTA VISION SERVICES

AN ACT to create and enact a new section to chapter 25-06 of the North Dakota Century Code, relating to definitions; to amend and reenact sections 25-06-01, 25-06-02, and 25-06-05 of the North Dakota Century Code, relating to the name of the school for the blind, duties of the school for the blind, and services to nonresidents; and to repeal sections 25-06-04, 25-06-07, and 25-06-09 of the North Dakota Century Code, relating to qualifications for admission, instruction at the school for the blind, and duty to report blind persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-06 of the North Dakota Century Code is created and enacted as follows:

Definitions. For purposes of this chapter, an individual who is blind means an individual who is totally blind or whose central visual acuity does not exceed twenty/two hundred in the better eye with corrective lenses, or the widest diameter of the visual field is no greater than twenty degrees; and an individual with a visual impairment means an individual with an impairment in vision which, even with correction, adversely affects the individual's functional ability.

SECTION 2. AMENDMENT. Section 25-06-01 of the North Dakota Century Code is amended and reenacted as follows:

25-06-01. North Dakota vision services - school for the blind - Maintained - Location. There must be maintained at Grand Forks, in Grand Forks County, ~~an institution~~ a statewide service, resource, and referral center for the education and training of the all residents of this state who are blind or have a visual impairment which must be known as the North Dakota vision services - school for the blind.

SECTION 3. AMENDMENT. Section 25-06-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-06-02. ~~Object~~ Duties and responsibilities of North Dakota vision services - school for the blind. ~~The~~ Within the limits of legislative appropriation, North Dakota vision services - school for the blind is a statewide resource center for the provision of services to residents of this state, including vision specific consultations, evaluations, information, and training and loans of adaptive devices, equipment, and materials. It shall receive and educate blind and partially blind children who are residents of this state and who, because of this handicap, are not able to receive an appropriate education in the public schools of this state 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 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 4. AMENDMENT. Section 25-06-05 of the North Dakota Century Code is amended and reenacted as follows:

25-06-05. Admission of Services to nonresidents. ~~Blind children of suitable age~~ Individuals who are blind or have a visual impairment who are not residents of this state may enroll in the receive services from North Dakota vision services - school for the blind upon payment in advance of if the individuals pay the cost of the education services as determined by the superintendent of public instruction. Nonresident children, however, Nonresidents may not be received receive services to the exclusion of children who are residents of this state.

SECTION 5. REPEAL. Sections 25-06-04, 25-06-07, and 25-06-09 of the North Dakota Century Code are repealed.

SECTION 6. STATUTORY REFERENCES RELATING TO SCHOOL FOR THE BLIND. The legislative council may insert or replace appropriate references to the school for the blind in North Dakota Century Code sections, consistent with usages contained in this Act. References inserted may be adjusted to suit the context and grammar of the sections and must be inserted so as to harmonize existing law with regard to the name change provided by this Act. The sections of the North Dakota Century Code to which the authority of this section applies include 15-34.1-02, 15-39-01, 15-39.1-04, 15-47-26, 15-47-27.2, 15-47-34, 15-59-05.1, 15.1-02-07, 20.1-03-04, 25-01-01, 25-01-03, 25-06-02.1, 25-06-02.2, 25-06-03, 25-06-10, 25-07-02, 32-12.2-01, 50-24.1-11, and 54-44.3-20.

SECTION 7. MEASURES ENACTED BY THE LEGISLATIVE ASSEMBLY RELATING TO SCHOOL FOR THE BLIND. The legislative council may insert appropriate references in any measure enacted by the legislative assembly which refers to the terms "North Dakota school for the blind" or "school for the blind" consistent with usages contained in this Act. References inserted may be adjusted to suit context and grammar of the sections and must be inserted so as to harmonize the legislative measure with regard to the name change provided by this Act.

CHAPTER 258

SENATE BILL NO. 2365

(Senators Erbele, Trenbeath)
(Representatives Kretschmar, Metcalf, Pollert)

ASSISTANCE DOGS

AN ACT to create and enact two new sections to chapter 25-13 of the North Dakota Century Code, relating to assistance dogs; to amend and reenact sections 25-13-02, 25-13-03, 25-13-04, 39-10-33.3, and subsection 22 of section 40-05-02 of the North Dakota Century Code, relating to the rights of individuals with disabilities who are accompanied by assistance dogs and the licensing of assistance dogs; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-13 of the North Dakota Century Code is created and enacted as follows:

Assistance dog - Definition. For purposes of this Act:

1. "Assistance dog" includes a dog that has been specially trained to assist an individual with a disability. The term includes guide dogs that guide individuals who are legally blind, hearing dogs that alert individuals who are hard of hearing to specific sounds, and service dogs for individuals with disabilities other than blindness or deafness. The term does not include a dog that is not trained to mitigate an individual's disability, but the presence of which is to provide for the comfort, protection, or personal defense of an individual.
2. "Service dogs" includes dogs trained to perform a variety of physical tasks, including pulling a wheelchair, lending balance support, retrieving dropped objects, and providing assistance in a medical crisis.

SECTION 2. AMENDMENT. Section 25-13-02 of the North Dakota Century Code is amended and reenacted as follows:

25-13-02. ~~Blind or handicapped person accompanied by guide or service~~ Individual with a disability - Assistance dog to be admitted to - Admission to public places. ~~Every totally or partially blind person has the right~~ An individual with a disability is entitled to be accompanied by a guide ~~an assistance dog and every handicapped person has the right to be accompanied by a service dog, especially trained for these purposes,~~ in places of public accommodations, common carriers, facilities of a health care provider, and all places ~~in~~ to which the public is generally invited, without being required to pay an extra charge for the ~~guide or service~~ assistance dog; provided, that ~~such persons are the individual is~~ liable for any damage done to the premises or facilities ~~facility~~ facility by the ~~dogs~~ assistance dog.

SECTION 3. A new section to chapter 25-13 of the North Dakota Century Code is created and enacted as follows:

Trainer and assistance dog in training - Admission to public places.

1. A trainer with an assistance dog in training may enter any place of public accommodation, common carrier, facility of a health care provider, and any place to which the public is generally invited, without being required to pay an extra charge for the assistance dog in training, provided:
 - a. The trainer notifies an onsite manager that an assistance dog in training is being brought onto the premises;
 - b. The trainer wears a photo identification card issued by a nationally recognized dog training program; and
 - c. The trainer is liable for any damage done to the premises or facility by the assistance dog in training.
2. Upon receiving notice as provided in subsection 1, the onsite manager may not deny admission to the trainer and the assistance dog in training without good cause.

SECTION 4. AMENDMENT. Section 25-13-03 of the North Dakota Century Code is amended and reenacted as follows:

25-13-03. Precautions of driver Driver of motor vehicle when approaching blind persons - Precaution - Individual with assistance dog. The If the driver of a motor vehicle approaching a totally or partially approaches an individual who is blind pedestrian or visually impaired and who is carrying a cane predominately white or metallic in color, with or without a red tip, or using a guide who is accompanied by an assistance dog, the driver shall take all reasonable precautions to avoid injury to such blind pedestrian, and any the individual and the assistance dog. Any driver who fails to take such reasonable precautions is liable in damages to the individual for any injury caused such pedestrian; provided that a totally or partially. An individual who is blind pedestrian or visually impaired and not carrying such a cane or using a guide an individual with a disability who is not accompanied by an assistance dog in any of the places, accommodations, or conveyances listed in section 25-13-02, shall have has all of the rights and privileges conferred by law upon other persons, and the individuals. The failure of a totally or partially an individual who is blind pedestrian or visually impaired to carry such a cane or use a guide the failure of an individual with a disability to be accompanied by an assistance dog in any such places, accommodations, or conveyances may not itself be held to constitute nor be is not by itself evidence of contributory negligence fault.

SECTION 5. AMENDMENT. Section 25-13-04 of the North Dakota Century Code is amended and reenacted as follows:

25-13-04. Penalty for interfering or denying use of facilities. Any person ~~or the agent of any person~~ who denies or interferes with admittance to or enjoyment of the public places or facilities enumerated in section 25-13-02 or otherwise interferes with the rights of a ~~totally or partially~~ an individual who is blind person or visually impaired, or with the rights of an individual who is accompanied by an assistance dog, is guilty of a class A misdemeanor. This section does not apply to a denial of admission under section 3 of this Act.

SECTION 6. AMENDMENT. Section 39-10-33.3 of the North Dakota Century Code is amended and reenacted as follows:

39-10-33.3. Blind pedestrian right of way. The driver of a vehicle shall yield the right of way to ~~any blind pedestrian~~ an individual who is blind or visually impaired and carrying a clearly visible white cane or to an individual with a disability who is accompanied by a guide or assistance dog.

SECTION 7. AMENDMENT. Subsection 22 of section 40-05-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

22. Dogs. To license dogs, and to regulate the keeping of dogs including authorization for their disposition or destruction in order to protect the health, safety, and general welfare of the public; provided, however, that license fees are waived in the case of an assistance dog.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 259

SENATE BILL NO. 2094

(Human Services Committee)

(At the request of the Department of Human Services)

HUMAN SERVICES CARE FUND ELIMINATED

AN ACT to repeal section 25-16-11 of the North Dakota Century Code, relating to purchase of residential care, custody, treatment, and education for developmentally disabled persons by the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 25-16-11 of the North Dakota Century Code is repealed.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 260

SENATE BILL NO. 2239 (Senators Fischer, Flakoll, Lee) (Representatives Delmore, Kliniske)

METABOLIC DISEASE SERVICES AND INSURANCE

AN ACT to create and enact a new section to chapter 25-17 and a new subsection to section 50-10-06 of the North Dakota Century Code, relating to definitions for the newborn screening law and services for treatment of phenylketonuria and maple syrup urine disease; and to amend and reenact sections 25-17-01, 25-17-02, 25-17-03, 25-17-04, 25-17-05, and 26.1-36-09.7 of the North Dakota Century Code, relating to services and insurance coverage for treatment of metabolic diseases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-17 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Low-protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of a metabolic disease. The term does not include a natural food that is naturally low in protein.
2. "Medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered under the direction of a physician.
3. "Metabolic disease" means a disease as designated by rule of the state health council for which early identification and timely intervention will lead to a significant reduction in mortality, morbidity, and associated disabilities.

SECTION 2. AMENDMENT. Section 25-17-01 of the North Dakota Century Code is amended and reenacted as follows:

25-17-01. Phenylketonuria and galactosemia Newborn screening education programs and tests. The state department of health shall:

1. Develop and ~~carry out an intensive~~ implement a metabolic disease educational program among physicians, hospital staffs of hospitals, public health nurses, and the citizens of this state concerning the diseases phenylketonuria and galactosemia, and other metabolic diseases causing mental retardation for which appropriate methods of detection, prevention, or treatment are available. This educational program must include information about the nature of the diseases and examinations about screening for the early detection of such these diseases in order so that proper measures may be taken to prevent

~~mental retardation~~ reduce mortality, morbidity, and associated disabilities.

2. Provide, on a statewide basis, a newborn screening, diagnostic, system and treatment control tests short-term followup services for which approved laboratory procedures are available for phenylketonuria, galactosemia, and other metabolic diseases causing mental retardation.
3. Provide that, upon completion of the testing, the actual testing materials must be returned to the department. The department shall forward the actual testing materials to the university of North Dakota school of medicine for storage and research purposes. The materials in the possession of the university of North Dakota school of medicine may not be destroyed without the authorization of the department. Coordinate with or refer individuals to public and private health care service providers for long-term followup services for metabolic diseases.

SECTION 3. AMENDMENT. Section 25-17-02 of the North Dakota Century Code is amended and reenacted as follows:

25-17-02. Establishment of testing regulations Rulemaking requirement.

The state department of health council and the department of human services shall establish standards and methods of testing to be employed for the determination of the diseases referred to in section 25-17-01 for which statewide testing programs are established adopt rules necessary to implement this chapter.

SECTION 4. AMENDMENT. Section 25-17-03 of the North Dakota Century Code is amended and reenacted as follows:

25-17-03. Treatment for positive diagnosis - Registry of cases.

1. The state department of health shall:
 - 1- a. Follow up ~~all~~ with attending physicians cases with positive tests for phenylketonuria, galactosemia, and other metabolic diseases ~~with the attending physician~~ in order to determine the exact diagnosis.
 - 2- b. ~~Make arrangements~~ Refer every diagnosed case of a metabolic disease to a qualified health care provider for the necessary treatment for diagnosed cases where treatment is indicated and the family is unable to pay the cost of such treatment of the metabolic disease.
 - 3- c. Maintain a registry of cases of phenylketonuria, galactosemia, and other metabolic diseases for the purpose of followup services to prevent mental retardation.
2. The department of human services, as a program provided under chapter 50-10, shall:
 - a. Provide medical food at no cost to males under age twenty-two and females under age forty-five who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income. If treatment services under this subsection are provided to an individual by the department, the department may seek reimbursement from any government program that provides

coverage to that individual for the treatment services provided by the department.

- b. Offer for sale at cost medical food to females age forty-five and over and to males age twenty-two and over who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income. These individuals are responsible for payment to the department for the cost of medical food.
- c. Provide low-protein modified food products, if medically necessary as determined by a qualified health care provider, to females under age forty-five and males under age twenty-two who are receiving medical assistance and are diagnosed with phenylketonuria or maple syrup urine disease.

SECTION 5. AMENDMENT. Section 25-17-04 of the North Dakota Century Code is amended and reenacted as follows:

25-17-04. Physician to initiate test and report positive diagnosis Testing and reporting requirements. The physician attending a newborn child, or the birth attendant in the case of an out-of-hospital birth, shall cause that newborn child to be subjected to testing for ~~phenylketonuria, galactosemia, and other~~ metabolic diseases, in the manner prescribed by the state department of health. A physician attending a ~~case of phenylketonuria, galactosemia, or other~~ patient with a metabolic disease ~~which may cause mental retardation~~ shall report the case to the state department of health. ~~This~~ The testing requirements of this section does do not apply if the parents of a newborn child object ~~thereto~~ to the testing on the grounds that testing for metabolic diseases conflicts with their religious tenets and practices.

SECTION 6. AMENDMENT. Section 25-17-05 of the North Dakota Century Code is amended and reenacted as follows:

25-17-05. Testing charges. The state ~~department of health~~ shall council may adopt rules that establish reasonable fees and may impose those fees to cover the costs of administering tests under this chapter. All test fees collected by the state department of health must be deposited in the state department of health operating account.

SECTION 7. AMENDMENT. Section 26.1-36-09.7 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-36-09.7. Foods and food products for inherited metabolic diseases.

- 1. As used in this section:
 - a. "Inherited metabolic disease" means maple syrup urine disease or phenylketonuria.
 - b. "Low-protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease. The term does not include a natural food that is naturally low in protein.

- c. "Medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered under the direction of a physician.
2. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage that provides prescription coverage on an individual, group, blanket, franchise, or association basis, unless the policy or contract provides, for any person covered under the policy or contract, coverage for medical foods and low-protein modified food products determined by a physician to be medically necessary for the therapeutic treatment of an inherited metabolic disease.
3. This section applies to any covered individual born after December 31, 1962. This section does not require coverage ~~for low protein modified food products~~ in excess of three thousand dollars per year total for low-protein modified food products or medical food for an individual with an inherited metabolic disease of amino acid or organic acid.
4. This section does not require medical benefits coverage for low protein modified food products or medical food for an individual to the extent those benefits are available to that individual under a state department of health or department of human services program.

¹³⁷ **SECTION 8.** A new subsection to section 50-10-06 of the North Dakota Century Code is created and enacted as follows:

Provide medical food and low-protein modified food products under chapter 25-17 to individuals with phenylketonuria or maple syrup urine disease.

Approved April 24, 2001
Filed April 24, 2001

¹³⁷ Section 50-10-06 was also amended by section 28 of House Bill No. 1012, chapter 12.

INSURANCE

CHAPTER 261

HOUSE BILL NO. 1406 (Representatives Ruby, Berg, Haas) (Senator Tollefson)

INSURANCE COMMISSIONER ANNUAL REPORTS

AN ACT to amend and reenact subsection 8 of section 26.1-01-03 of the North Dakota Century Code, relating to the duty of the insurance commissioner to send annual reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 8 of section 26.1-01-03 of the North Dakota Century Code is amended and reenacted as follows:

8. ~~Send~~ Upon request, send a copy of the commissioner's annual report to the insurance commissioner, or other similar officer, of every other state and to each company doing business in this state.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 262

SENATE BILL NO. 2144

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

INSURANCE PRODUCER LICENSING

AN ACT to create and enact sections 26.1-26-13.1, 26.1-26-13.2, 26.1-26-13.3, 26.1-26-25.1, 26.1-26-30.1, 26.1-26-45.1, and 26.1-26-47.1 of the North Dakota Century Code, relating to the licensing of insurance producers; to amend and reenact subdivision n of subsection 1 of section 10-04-11, subsections 15, 16, and 22 of section 26.1-01-07, subsection 6 of section 26.1-02-06, section 26.1-02-24.1, subsection 3 of section 26.1-02.1-01, subdivision a of subsection 1 of section 26.1-02.1-02, subsections 2 and 3 of section 26.1-02.1-04, subsection 2 of section 26.1-03.1-08, subsection 2 of section 26.1-03.2-08, subsection 12 of section 26.1-04-03, sections 26.1-04-04, 26.1-04-05, 26.1-04-06, 26.1-04-07, 26.1-04-16, 26.1-04-17, and 26.1-05-07.2, subdivisions a and b of subsection 3 of section 26.1-06.1-04, subsection 4 of section 26.1-06.1-13, subdivision c of subsection 1 of section 26.1-06.1-21, subdivision a of subsection 3 of section 26.1-06.1-21, subdivision a of subsection 1 of section 26.1-06.1-32, subsection 1 of section 26.1-06.1-51, subsection 3 of section 26.1-08-11, sections 26.1-09-03, 26.1-09-11, and 26.1-09-13, subdivisions b and j of subsection 1 of section 26.1-10-02, subsection 9 of section 26.1-11-01, sections 26.1-11-07, 26.1-15.1-33, 26.1-16-12, 26.1-16-13, 26.1-17-23, and 26.1-17.1-15, subsection 1 of section 26.1-17.1-18, subsection 13 of section 26.1-18.1-01, subsection 2 of section 26.1-18.1-18, section 26.1-19-10, subsection 5 of section 26.1-19-14, subsection 3 of section 26.1-20.1-01, subsection 3 of section 26.1-20.1-02, subdivision b of subsection 1 of section 26.1-20.1-06, subsection 2 of section 26.1-20.1-06, subsection 1 of section 26.1-20.1-09, sections 26.1-22-21, 26.1-24-08, 26.1-24-09, 26.1-25-16, 26.1-26-01, 26.1-26-02, 26.1-26-03, 26.1-26-04, 26.1-26-05, 26.1-26-06, 26.1-26-07, 26.1-26-09, 26.1-26-10, 26.1-26-11, 26.1-26-17, 26.1-26-20, 26.1-26-25, 26.1-26-26, 26.1-26-30, 26.1-26-31, 26.1-26-31.1, 26.1-26-31.8, 26.1-26-32, 26.1-26-33, 26.1-26-34, 26.1-26-36, 26.1-26-41, 26.1-26-42, 26.1-26-43, 26.1-26-48, 26.1-26-52, 26.1-26.1-01, 26.1-26.1-02, 26.1-26.1-03, and 26.1-26.1-04, subdivision b of subsection 3 of section 26.1-26.3-01, subsections 1 and 2 of section 26.1-26.3-02, subdivision c of subsection 10 of section 26.1-26.3-03, subsection 6 of section 26.1-26.3-04, subdivision b of subsection 1 of section 26.1-26.3-06, subdivision h of subsection 1 of section 26.1-26.6-05, subsection 4 of section 26.1-27-01, sections 26.1-28-02, 26.1-28-03, 26.1-28-04, 26.1-29-26, and 26.1-30.1-01.1, subsection 4 of section 26.1-31.1-01, subsection 8 of section 26.1-33-28, subdivision b of subsection 1 of section 26.1-36-04, sections 26.1-36-40 and 26.1-36.1-09, subsection 29 of section 26.1-36.3-01, subsection 1 of section 26.1-38.1-16, subdivision d of subsection 3 of section 26.1-38.1-16, section 26.1-39-06, subsections 1 and 2 of section 26.1-39-11, subsections 2 and 3 of section 26.1-39-12, subsection 4 of section 26.1-39-16, section 26.1-39-17, subsection 1 of section 26.1-39-18, sections 26.1-39-19, 26.1-39-22, and 26.1-39-23, subsections 1 and 2 of section 26.1-40-01, section 26.1-40-07, subsections 2 and 3 of section 26.1-40-10, sections 26.1-40-11, 26.1-44-02, 26.1-44-03, 26.1-44-04, 26.1-44-05, 26.1-44-06,

26.1-44-08, and 26.1-45-04.1, paragraph 2 of subdivision a of subsection 2 of section 26.1-45-09, sections 26.1-45-11 and 26.1-45-12, subsections 3, 4, and 10 of section 26.1-46-03, subsection 8 of section 26.1-46-06, subsection 1 of section 26.1-46-08, subsection 2 of section 26.1-46-08.1, and section 26.1-46-11 of the North Dakota Century Code, relating to the licensing of insurance producers; to repeal sections 26.1-26-08, 26.1-26-12, 26.1-26-13, 26.1-26-15.1, 26.1-26-16, 26.1-26-16.1, 26.1-26-16.2, 26.1-26-18, 26.1-26-23, 26.1-26-24, 26.1-26-28, 26.1-26-29, and 26.1-26-38 of the North Dakota Century Code, relating to the licensing of insurance producers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision n of subsection 1 of section 10-04-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- n. Is the subject of an order entered by the insurance administrator of any state denying or revoking registration as an ~~agent, broker~~ insurance producer, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02.

SECTION 2. AMENDMENT. Subsections 15, 16, and 22 of section 26.1-01-07 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

15. For issuing and each annual renewal of ~~an insurance broker's,~~ a surplus lines insurance ~~broker's,~~ producer's or insurance consultant's license, ten dollars.
16. For issuing an insurance ~~agent's~~ producer's license, one hundred dollars.
22. For each insurance company appointment and renewal of an appointment of an insurance ~~agent~~ producer, ten dollars.

SECTION 3. AMENDMENT. Subsection 6 of section 26.1-02-06 of the North Dakota Century Code is amended and reenacted as follows:

6. Directly or indirectly acting as an ~~agent~~ insurance producer for or otherwise representing or aiding on behalf of another, any person or insurance company in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurance company in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed, in this state. This subsection does not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of the employer.

SECTION 4. AMENDMENT. Section 26.1-02-24.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02-24.1. Definition. For the purpose of this section and section 26.1-02-24.2, "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, ~~broker~~ insurance producer, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which the person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

SECTION 5. AMENDMENT. Subsection 3 of section 26.1-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Insurer" includes an authorized insurer, self-insurer, reinsurer, broker, insurance producer, or any agent thereof.

SECTION 6. AMENDMENT. Subdivision a of subsection 1 of section 26.1-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

- a. Presents or causes to be presented to an insurer, reinsurer, insurance producer, ~~broker~~, or any agent thereof, any oral or written statement knowing that the statement contains any false or misleading information concerning any fact material to an application for the issuance of an insurance policy;

SECTION 7. AMENDMENT. Subsections 2 and 3 of section 26.1-02.1-04 of the North Dakota Century Code are amended and reenacted as follows:

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 national association of insurance commissioners, or any not-for-profit organization established to detect and prevent fraudulent insurance acts or 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 national association of insurance commissioners, or any not-for-profit organization established to detect and prevent fraudulent insurance acts or 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.

SECTION 8. AMENDMENT. Subsection 2 of section 26.1-03.1-08 of the North Dakota Century Code is amended and reenacted as follows:

2. It is the judgment of the legislative assembly that the comparison of an insurer's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer, and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation, by any insurer, ~~agent, broker~~ insurance producer, or other person engaged in any manner in the insurance business would be misleading and is prohibited. However, if any materially false statement with respect to the comparison regarding an insurer's total adjusted capital to its risk-based capital levels, or any of them, or an inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

SECTION 9. AMENDMENT. Subsection 2 of section 26.1-03.2-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. It is the judgment of the legislature that the comparison of a health organization's total adjusted capital to any of its risk-based capital levels is a regulatory tool that may indicate the need for corrective action with respect to the health organization and is not intended as a means to rank health organizations generally. Therefore, except as otherwise required under the provisions of this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over a radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any health organization, or of any component derived in the calculation, by any health organization, ~~agent, broker~~ insurance producer, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding a health organization's total adjusted capital to its risk-based capital levels, or any of them, or an inappropriate comparison of any other

amount to the health organization's risk-based capital levels is published in any written publication and the health organization is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

SECTION 10. AMENDMENT. Subsection 12 of section 26.1-04-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, ~~agent, broker~~ insurance producer, or individual.

SECTION 11. AMENDMENT. Section 26.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-04. Coercing purchaser or borrower to insure with particular company or ~~agent~~ insurance producer prohibited.

1. No person, engaged in selling property or in the business of financing the purchase of property or of lending money on the security of property and no trustee, director, officer, agent, or other employee of the person may require, as a condition precedent, concurrent, or subsequent to the sale or financing the purchase of the property or to lending money upon the security of a mortgage thereon or for the renewal or extension of any such loan or mortgage or for the performance of any other act in connection therewith, that the person purchasing the property or for whom the purchase is to be financed or to whom the money is to be loaned or for whom the extension, renewal, or other act is to be granted, or performed, negotiate any insurance policy or renewal thereof covering the property through a particular insurance company; ~~agent, solicitor, or broker~~ insurance producer.
2. This section does not prevent the exercise by any person of the right to designate reasonable financial requirements as to the insurance company, the terms and provisions of the policy, and the adequacy of the coverage with respect to insurance on property pledged or mortgaged to the person; nor does this section prohibit the right of any person from voluntarily negotiating or soliciting the placing of such insurance; nor does this section forbid the securing of insurance or renewal thereof at the request of the purchaser or borrower or because of the failure of the purchaser or borrower to furnish the necessary insurance or renewal thereof.
3. Violation of this section constitutes an unfair insurance practice. The person violating this section must be proceeded against under this chapter.

SECTION 12. AMENDMENT. Section 26.1-04-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-05. Discrimination by life companies and rebates and inducements by agents insurance producers prohibited. A life insurance company doing business in this state may not make or permit any distinction or discrimination between insureds of the same class and with equal expectation of life in the amount or payment of premiums or rate charges for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms or conditions of the contracts which it makes. No life insurance company, and no ~~agent or solicitor~~ insurance producer therefor, either personally or by any other person, may:

1. Make any insurance contract, or agreement with reference thereto, other than such as is expressed plainly in the policy issued thereon.
2. Offer, promise, allow, give, set off, or pay any rebate of the whole or any part of the premium payable on the policy or the agent's insurance producer's commission thereon, or any special favor or advantage in the dividends, earnings, profits, or other benefit founded, arising, accruing, or to accrue thereon or therefrom.
3. Offer, promise, allow, or give any special advantage in the date of the policy or the age at which the same is issued.
4. Offer, promise, allow, or give any paid employment or contract for services of any kind, or any other valuable inducement or consideration whatever not specified in the insurance policy or contract.
5. Offer, promise, give, option, sell, or purchase, or offer to give, sell, or purchase, as inducement to insurance or in connection therewith, any stocks, bonds, securities, or property, or any dividends or profits accruing or to accrue thereon, or other thing of value whatsoever not specified in the policy.

This section does not prevent the taking of a bona fide obligation, with legal interest, in payment of any premium.

SECTION 13. AMENDMENT. Section 26.1-04-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-06. Insured persons and applicants for insurance prohibited from accepting rebates. An insurance ~~broker, limited insurance representative,~~ producer or agent of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, may not grant, and an insured person or party or applicant for insurance, either directly or indirectly, may not receive or accept, or agree to receive or accept, any rebate of premium or of any part thereof, or all or any part of any ~~agent's,~~ insurance broker's, limited insurance representative's, or solicitor's producer's commission thereon, or any favor or advantage, or any share in any benefit to accrue under any insurance policy, or any other valuable consideration or inducement other than such as may be specified in the policy, except as provided in an applicable filing which is in effect under the provisions of the laws regulating insurance rates.

SECTION 14. AMENDMENT. Section 26.1-04-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-07. Misrepresentation of terms of policy and future dividends prohibited. An insurance or surety company, reciprocal, benevolent society, or any

other insurance organization or association, however constituted or entitled, doing business in this state, and an officer, director, agent, or solicitor of the company, society, or organization, and an insurance ~~broker or limited insurance representative~~ producer, may not issue, circulate, or use, or cause or permit to be issued, circulated, or used, any written or oral statement or circular misrepresenting the terms of any policy issued or to be issued by the company, society, or organization, or the benefits or advantages, promised thereby, or make an estimate, with intent to deceive, of the future dividends or shares of surplus payable under the policy, or use any name or title of any policy or class of policies misrepresenting the true nature thereof.

SECTION 15. AMENDMENT. Section 26.1-04-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-16. Penalty for violating provisions relating to misrepresentation and discrimination. Any officer, agent, ~~solicitor~~ insurance producer, or representative of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization, or association, or any other person, who violates section 26.1-04-05, 26.1-04-06, 26.1-04-07, or 26.1-04-17 is guilty of a class A misdemeanor. The commissioner may, after a hearing upon fifteen days' notice, revoke the license to transact business in this state of any insurance organization violating section 26.1-04-05 or 26.1-04-06.

SECTION 16. AMENDMENT. Section 26.1-04-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-04-17. Revocation or suspension of insurance ~~broker's, limited insurance representative's, and agent's~~ producer's license for misrepresentation or discrimination. Upon satisfactory evidence of the violation of any provision of this chapter relating to misrepresentation or discrimination by any insurance ~~broker, limited insurance representative, agent, or solicitor~~ producer of any insurance or surety company, reciprocal, benevolent society, or any other insurance organization or association, however constituted or entitled, the commissioner may suspend or revoke the license of the offending ~~solicitor or agent~~ insurance producer.

SECTION 17. AMENDMENT. Section 26.1-05-07.2 of the North Dakota Century Code is amended and reenacted as follows:

26.1-05-07.2. Effects of redomestication. In the discretion of the commissioner, the certificate of authority, ~~agent~~ insurance producer appointments and licenses, rates, and other items in existence at the time an insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this state or another state by merger, consolidation, or any other lawful method, continue in effect upon the transfer if the insurer remains duly qualified to transact the business of insurance in this state. An outstanding policy of a transferring insurer remains in effect and does not need to be endorsed as to the new name of the company or its new location unless so ordered by the commissioner. A transferring insurer shall file new policy forms with the commissioner on or before the effective date of the transfer, but may use existing forms with appropriate endorsements as approved by the commissioner. A transferring insurer shall notify the commissioner of the details of the proposed transfer and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the commissioner.

SECTION 18. AMENDMENT. Subdivisions a and b of subsection 3 of section 26.1-06.1-04 of the North Dakota Century Code are amended and reenacted as follows:

- a. If the person served is an ~~agent, broker,~~ insurance producer or other person who has at any time written policies of insurance for or has acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;
- b. If the person served is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an ~~agent or broker~~ insurance producer of or for the reinsurer, in any action on or incident to the reinsurance contract;

SECTION 19. AMENDMENT. Subsection 4 of section 26.1-06.1-13 of the North Dakota Century Code is amended and reenacted as follows:

4. If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, ~~agent, broker,~~ insurance producer, employee, or other person, the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.

SECTION 20. AMENDMENT. Subdivision c of subsection 1 of section 26.1-06.1-21 of the North Dakota Century Code is amended and reenacted as follows:

- c. By first-class mail to all insurance ~~agents~~ producers of the insurer;

SECTION 21. AMENDMENT. Subdivision a of subsection 3 of section 26.1-06.1-21 of the North Dakota Century Code is amended and reenacted as follows:

3. a. Notice under subsection 1 to ~~agents~~ insurance producers of the insurer and to potential claimants who are policyholders must include, where applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

SECTION 22. AMENDMENT. Subdivision a of subsection 1 of section 26.1-06.1-32 of the North Dakota Century Code is amended and reenacted as follows:

1. a. An ~~agent, broker,~~ insurance producer, premium finance company, or any other person, other than the insured, responsible for the payment of a premium is obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission of such person. Credits or setoffs, or both, may not be allowed to an ~~agent, broker,~~ insurance producer or premium finance company for any amounts advanced to the insurer by the ~~agent, broker,~~ insurance producer or premium finance company on behalf of, but in the absence of a payment by, the insured.

SECTION 23. AMENDMENT. Subsection 1 of section 26.1-06.1-51 of the North Dakota Century Code is amended and reenacted as follows:

1. The domiciliary liquidator of an insurer domiciled in a reciprocal state, except as to special deposits and security on secured claims under subsection 3 of section 26.1-06.1-52, is vested by operation of law with the title to all of the assets, property, contracts and rights of action, ~~agents'~~ insurance producers' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting must be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting or property in the domiciliary state. Otherwise, the date of vesting must be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from ~~agents~~ insurance producers and to obtain possession of the books, accounts, and other records of the insurer located in this state. The domiciliary liquidator shall also have the right to recover all other assets of the insurer located in this state, subject to section 26.1-06.1-52.

SECTION 24. AMENDMENT. Subsection 3 of section 26.1-08-11 of the North Dakota Century Code is amended and reenacted as follows:

3. All licensed accident and health insurance ~~agents~~ producers may engage in the selling or marketing of qualified association plans. The lead carrier shall pay an ~~agent's~~ insurance producer's referral fee of twenty-five dollars to each licensed accident and health insurance ~~agent~~ 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 plan.

SECTION 25. AMENDMENT. Section 26.1-09-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-09-03. Reciprocal or interinsurance contracts - Execution. Reciprocal or interinsurance contracts may be executed by an attorney, ~~agent~~ insurance producer, or other representative, in this chapter designated as an attorney, duly authorized and acting for the subscribers. The attorney may be a corporation. The office of the attorney may be maintained at the place designated by the subscribers in the power of attorney.

SECTION 26. AMENDMENT. Section 26.1-09-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-09-11. Appointment of ~~agents~~ insurance producers by attorney - ~~Agent's~~ Insurance producer's license fee. The attorney may appoint ~~agents~~ insurance producers to represent the attorney in this state, but the ~~agents~~ insurance producers, before writing or soliciting any of the insurance provided for under this chapter, must receive a certificate of authority from the commissioner. The fee for the certificate is that specified in section 26.1-01-07.

SECTION 27. AMENDMENT. Section 26.1-09-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-09-13. Solicitation without certificate of authority - Limitation. For the purpose of organization, and upon the issuance of a permit by the commissioner, powers of attorney may be solicited without a license or certificate of authority, but an

attorney, ~~agent~~ insurance producer, or other person may not effect any insurance contract under this chapter until in compliance with this chapter.

¹³⁸ **SECTION 28. AMENDMENT.** Subdivisions b and j of subsection 1 of section 26.1-10-02 of the North Dakota Century Code are amended and reenacted as follows:

- b. Acting as an insurance ~~broker or as insurance agent~~ producer for its parent or for any of its parent's insurance company subsidiaries.
- j. Financing of insurance premiums, ~~agents~~ insurance producers, and other forms of consumer financing.

SECTION 29. AMENDMENT. Subsection 9 of section 26.1-11-01 of the North Dakota Century Code is amended and reenacted as follows:

- 9. Agreed to appoint, and will appoint, as its ~~agents~~ insurance producers in this state only residents of this state except as otherwise provided in chapter 26.1-26.

SECTION 30. AMENDMENT. Section 26.1-11-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-11-07. Countersignature requirement - Commissions - Reciprocity. Notwithstanding any other provision of this title or policy forms to the contrary, there may not be any requirement that an ~~agent~~ insurance producer resident in this state sign or countersign an insurance policy covering a subject of insurance resident, located, or to be performed in this state. However, if the laws or rules of another state require a signature or countersignature by an ~~agent~~ insurance producer resident in that state on an insurance policy written by a nonresident ~~agent or nonresident broker~~ insurance producer of that state, then any insurance policy written by an ~~agent~~ insurance producer resident of that state licensed as a nonresident ~~agent~~ insurance producer in this state covering a subject of insurance resident, located, or to be performed in this state must be signed or countersigned in writing by an ~~agent~~ insurance producer resident in this state. An insurance policy may not be deemed invalid because of the absence of the required signature or countersignature. If the laws or rules of another state require an ~~agent~~ insurance producer resident in that state to retain a portion of the commission paid on a like insurance policy written, countersigned, or delivered by the ~~agent~~ insurance producer in that state at the request of a nonresident ~~agent or nonresident broker~~ insurance producer of that state, then the ~~agent~~ insurance producer resident in this state who signed or countersigned an insurance policy written by a resident of that state licensed as a nonresident ~~agent~~ insurance producer in this state covering a subject of insurance resident, located, or to be performed in this state shall retain an equal pro rata portion of any commission on the insurance policy.

SECTION 31. AMENDMENT. Section 26.1-15.1-33 of the North Dakota Century Code is amended and reenacted as follows:

¹³⁸ Section 26.1-10-02 was also amended by section 4 of House Bill No. 1176, chapter 264.

26.1-15.1-33. Licensing of agents. ~~Agents~~ Insurance producers of societies must be licensed under chapter 26.1-26.

SECTION 32. AMENDMENT. Section 26.1-16-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-16-12. Territorial restrictions on society - Voluntary contribution plan benefits regulated by chapter. Any society organized under this chapter shall confine its activities, insofar as solicitation by ~~agents~~ insurance producers is concerned, to this state. No benefits on the voluntary contribution plan may be provided by any society except as provided in this chapter.

SECTION 33. AMENDMENT. Section 26.1-16-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-16-13. Licensing of ~~agents~~ - Residence requirements insurance producers. All ~~agents~~ insurance producers of a benevolent society must be ~~residents of this state and must be~~ licensed in the same manner as ~~agents~~ insurance producers for insurance companies generally are licensed.

SECTION 34. AMENDMENT. Section 26.1-17-23 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-23. Licensing of sales representatives. The sales representatives of any health service corporation are subject to the laws pertaining to insurance ~~agents~~ producers as defined in chapter 26.1-26. The license for a sales representative must be issued on a form prescribed by the commissioner, and the fee for a license or renewal is prescribed in section 26.1-01-07.

SECTION 35. AMENDMENT. Section 26.1-17.1-15 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17.1-15. ~~Agents~~ Insurance producers. No individual may apply, procure, negotiate, or place for others any policy or contract of a prepaid limited health service organization unless that individual holds a license or is otherwise duly authorized to sell accident and health insurance policies, health, hospital or medical service contracts, or health maintenance organization contracts.

SECTION 36. AMENDMENT. Subsection 1 of section 26.1-17.1-18 of the North Dakota Century Code is amended and reenacted as follows:

1. A prepaid limited health service organization shall maintain in force a fidelity bond in its own name on its officers and employees in an amount not less than fifty thousand dollars or in any other amount prescribed by the commissioner. Except as otherwise provided by this subsection, the bond must be issued by an insurance company that is licensed to do business in this state or, if the fidelity bond required by this subsection is not available from an insurance company that holds a certificate of authority in this state, a fidelity bond procured by a licensed surplus lines ~~agent resident~~ insurance producer in this state shall satisfy the requirements of this subsection.

SECTION 37. AMENDMENT. Subsection 13 of section 26.1-18.1-01 of the North Dakota Century Code is amended and reenacted as follows:

13. "Health maintenance organization producer" means an insurance ~~agent or insurance broker~~ producer, as defined in section 26.1-26-02, who solicits, negotiates, effects, procures, delivers, renews, or continues a policy or contract for health maintenance organization membership, or who takes or transmits a membership fee or premium for such a policy or contract, other than for that person, or a person who advertises or otherwise holds out to the public as such.

SECTION 38. AMENDMENT. Subsection 2 of section 26.1-18.1-18 of the North Dakota Century Code is amended and reenacted as follows:

2. Every health maintenance organization and provider shall submit its books and records for the examinations and in every way facilitate the completion of the examination. For the purpose of examinations, the commissioner may administer oaths to, and examine the officers and ~~agents~~ insurance producers of, the health maintenance organization and the principals of the providers concerning their business.

SECTION 39. AMENDMENT. Section 26.1-19-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-19-10. Licensing of sales representatives. The sales representatives of a prepaid legal services organization are subject to the laws pertaining to insurance ~~agents~~ producers as defined in chapter 26.1-26. The license for a sales representative must be issued on a form prescribed by the commissioner, and the fee for a license or renewal thereof shall be prescribed in section 26.1-01-07.

SECTION 40. AMENDMENT. Subsection 5 of section 26.1-19-14 of the North Dakota Century Code is amended and reenacted as follows:

5. For the purpose of examination, the commissioner may issue subpoenas, administer oaths to, and examine the officers and ~~agents~~ insurance producers of the prepaid legal services organization, as well as any providers of services.

SECTION 41. AMENDMENT. Subsection 3 of section 26.1-20.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance ~~agent or broker~~ producer in payment of premiums on an insurance policy together with a finance charge. The term does not include an agreement to finance premiums where a life or disability insurance policy is made the security or collateral for the repayment of a debt.

SECTION 42. AMENDMENT. Subsection 3 of section 26.1-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. This chapter does not apply to ~~resident~~ insurance ~~agents~~ producers; insurers who finance their own premiums; banks; savings and loan associations; credit unions; annuity, safe deposit, and trust companies; subsidiary trust companies; small loan companies; licensed money brokers; or other financial institutions licensed to do business in this state.

SECTION 43. AMENDMENT. Subdivision b of subsection 1 of section 26.1-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

- b. Contain the name and place of business of the insurance ~~agent or insurance broker~~ producer negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by the insured, the name and place of business of the insurance premium finance company to which installments or other payments are to be made, a description of the insurance policies financed including the term and type of policy; and

SECTION 44. AMENDMENT. Subsection 2 of section 26.1-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. If additional or subsequent premiums are proposed to be added to an existing premium finance agreement by an insured resulting from additional premiums required under policies presently being financed, from a renewal of a policy, or from other policies owned or purchased by the insured, the premium finance company shall provide the insured with the proposed revisions to the items in subdivision c of subsection 1 in writing along with a written invoice or copy of the invoice received from the insurer or licensed ~~resident agent~~ insurance producer which describes the additional premium proposed to be added to the original contract. The insured shall affirm the proposed revisions by paying the revised installment or may disaffirm the add-on revisions by continuing to make the payment called for in the original contract. The premium finance company may not charge a higher annual percentage rate of interest for the additional amount than that charged in the original premium finance agreement.

SECTION 45. AMENDMENT. Subsection 1 of section 26.1-20.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The insurance premium finance company shall mail to the insured and to the insurance ~~agent or insurance broker~~ producer indicated on the premium finance agreement at least ten days' written notice of the insurance premium finance company's intent to cancel the insurance policy unless the default is cured prior to the date stated in the notice. If the default is not cured by the date specified in the notice, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice of the cancellation. The insurance policy must be canceled as if the notice of cancellation had been submitted by the insured, but without requiring the return of the insurance policy. The notice may be mailed by the insurance premium finance company to the insurer at the address on the premium finance agreement or on file with the commissioner. The insurance premium finance company shall also mail a notice of cancellation to the insured at the insured's last-known address and to the insurance ~~agent or insurance broker~~ producer indicated on the premium finance agreement.

SECTION 46. 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 reinsurance contract must meet the following minimum specifications:

1. 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 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 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 ~~negotiated with and~~ countersigned by a licensed North Dakota resident insurance ~~agent~~ 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, 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 47. AMENDMENT. Section 26.1-24-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-24-08. Security agreement to secure premium payment must be in separate instrument - Penalty. It is unlawful for any insurance company, or any ~~agent or solicitor~~ insurance producer therefor within this state, to take or procure to be taken upon the property to be insured, or upon any other property, a security agreement securing the payment of the premium due or to become due, including policy fees, or any part thereof, unless the security agreement is printed or written upon a paper which is separate and distinct from the application. Any security agreement given in violation of this section is void. Any insurance company violating this section is guilty of a class A misdemeanor, and forfeits its right to do business in this state.

SECTION 48. AMENDMENT. Section 26.1-24-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-24-09. Sale or negotiation of premium note prohibited - Penalty. A promissory note taken in settlement of the first premium on any life, health, or accident insurance policy may not be sold or negotiated in any manner prior to the applicant's medical examination, where one is required, nor a binding receipt for the

premium signed by an authorized ~~agent~~ insurance producer of the insurance company has been delivered to the applicant, nor until the insurance company has received the application and medical examination. Any person violating this section is guilty of a class B misdemeanor.

SECTION 49. AMENDMENT. Section 26.1-25-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-25-16. Rebates prohibited. No ~~broker or agent~~ insurance producer may knowingly charge, demand, or receive a premium for any insurance policy except in accordance with this chapter. No insurer or employee of an insurer, and no broker or agent may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing. No insured named in an insurance policy, nor any employee of the insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed ~~agents or brokers~~ insurance producers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers, dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond.

SECTION 50. AMENDMENT. Section 26.1-26-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-01. Scope. This chapter governs the qualifications and procedures for the licensing of insurance ~~agents, insurance brokers~~ producers, insurance consultants, and surplus lines insurance ~~brokers~~ producers. This chapter applies to all lines of insurance and types of insurers including prepaid legal service organizations and health maintenance organizations.

SECTION 51. AMENDMENT. Section 26.1-26-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-02. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.
2. "Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains the producer's principal place of residence or principal place of business and is licensed to act as an insurance producer.
3. "Insurance" ~~includes annuities~~ means any of the lines of authority in section 26.1-26-11.
2. "Insurance agent" means an individual, ~~partnership, limited liability partnership, corporation, or limited liability company~~ appointed by an

insurer to solicit applications for an insurance policy or to negotiate a policy on its behalf.

3. "Insurance broker" means any individual, partnership, limited liability partnership, corporation, or limited liability company which, for compensation, not being a licensed agent for the insurer in which an insurance policy is placed, acts or aids in any manner in negotiating insurance contracts or placing risks of effecting insurance for a party other than oneself or itself.
4. "Insurance consultant" means an individual, partnership, limited liability partnership, corporation, or limited liability company a person that, for a fee, holds oneself or itself out to the public as engaged in the business of offering any advice, counsel, opinion, or service with respect to the benefits, advantages, or disadvantages promised under any insurance policy that could be issued in this state.
5. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
6. "Insurer" means all types of insurance companies as well as prepaid legal service organizations and health maintenance organizations.
7. "License" means a document issued by the commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit an insurance carrier.
8. "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.
9. "Person" means an individual or a business entity.
10. "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.
11. "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.
12. "Surplus lines insurance ~~broker~~ producer" means an individual, partnership, limited liability partnership, corporation, or limited liability company which a person that sells, solicits, negotiates, or procures an insurance policy from an insurer not licensed to transact business in this state which cannot be procured from an insurer licensed to do business in this state.
13. "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer's authority to transact insurance.

14. "Uniform application" means the current version of the national association of insurance commissioners uniform application for resident and nonresident insurance producer licensing.
15. "Uniform business entity application" means the current version of the national association of insurance commissioners uniform business entity application for resident and nonresident business entities.

SECTION 52. AMENDMENT. Section 26.1-26-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-03. License required - Acting as agent, broker, insurance producer or consultant without license prohibited - Penalty. No person may act as or hold oneself out to be an insurance agent, insurance broker, insurance producer, insurance consultant, or surplus lines insurance broker unless licensed under this chapter. ~~No insurance agent, insurance broker, or surplus lines insurance broker may apply for, procure, negotiate for, or place for others, any policy for any line of insurance as to which that person is not then qualified and licensed under this chapter. A person may not sell, solicit, or negotiate insurance in this state for any class of insurance unless the person is licensed for that line of authority in accordance with this chapter. Any person willfully violating this section is guilty of a class C felony.~~

SECTION 53. AMENDMENT. Section 26.1-26-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-04. Payment to or acceptance by unlicensed person of commission prohibited - When payment or assignment of commissions permitted Commissions. ~~No insurer, insurance agent, insurance broker, or surplus lines insurance broker may pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any person for services as an insurance agent, insurance broker, or surplus lines insurance broker within this state, unless that person held at the time the services were performed a valid license for that line of insurance as required by the laws of this state; nor may any person, other than a person licensed by this state as an insurance agent, insurance broker, or surplus lines insurance broker at the time the services were performed, accept any such commission, brokerage, or other valuable consideration. In the case of an insurance agent, the agent must also be properly appointed under this chapter before the insurer may pay, or the agent may accept, any commission or other valuable consideration for services as an insurance agent. However, any person licensed under this chapter may pay or assign that person's commissions, or direct that the commissions be paid, to a partnership or limited liability partnership of which that person is a member, employee, or agent, to a corporation of which that person is an officer, employee, or agent, or to a limited liability company of which that person is a manager, employee, or agent. This section does not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.~~

1. An insurance company or insurance producer may not pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not licensed.
2. A person may not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in

this state if that person is required to be licensed under this chapter and is not licensed.

3. Renewal or other deferred compensation may be paid to a person for selling, soliciting, or negotiating insurance in this state if that person was required to be licensed under this chapter at the time of the sale, solicitation, or negotiation and was licensed at that time.
4. An insurer or insurance producer may pay or assign commissions, service fees, brokerages, or other valuable consideration to an insurance agency or to persons that do not sell, solicit, or negotiate insurance in this state, unless the payment violates section 26.1-04-06.

SECTION 54. AMENDMENT. Section 26.1-26-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-05. Unlicensed person - Effect - Agent for insurer. A person not licensed as an insurance ~~agent, insurance broker, producer~~ or surplus lines insurance ~~broker~~ producer who sells, solicits, or negotiates an insurance policy on behalf of an insurer is an insurance ~~agent~~ producer within the intent of this chapter, and is liable for all the duties, requirements, liabilities, and penalties to which an insurance ~~agent~~ producer of the insurer is subject. An insurer accepting business from an unlicensed person through any of its officers, ~~agents~~ insurance producers, or employees thereby acknowledges that person as its agent an insurance producer acting on its behalf in the transaction. ~~A person not licensed as an insurance broker, but who solicits an insurance policy on behalf of others or transmits for others an application for an insurance policy to or from an insurer, or offers or assumes to act in the negotiations of such insurance, is an insurance broker within the intent of this chapter, and is liable for all the duties, requirements, liabilities, and penalties to which licensed brokers are subject.~~

SECTION 55. AMENDMENT. Section 26.1-26-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-06. Insurance ~~agent~~ producer - Agent of insurer. ~~Every~~ An insurance ~~agent~~ producer who sells, solicits, or negotiates an application for insurance of any kind is, in any controversy between the insured or the insured's beneficiary and the insurer, regarded as representing the insurer and not the insured or the insured's beneficiary. An insurance producer may not act as an agent of an insurer unless the insurance producer becomes an appointed insurance producer of that insurer. This section does not affect the apparent authority of an agent.

SECTION 56. AMENDMENT. Section 26.1-26-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-07. ~~Broker~~ Insurance producer - Agent of insured. ~~Every~~ An insurance ~~broker~~ producer or surplus lines insurance ~~broker~~ who solicits an application for insurance of any kind, in any controversy between the insured or the insured's beneficiary and the insurer issuing any policy upon the application producer, who is not an appointed insurance producer of the insurer with which an insurance policy is placed and who acts or aids in any manner in negotiating insurance contracts or placing risks of effecting insurance for a party other than oneself or itself, is regarded as representing the insured or the insured's beneficiary and not the insurer. However, any insurer that directly or through its agents delivers in this state to any insurance broker a policy of insurance pursuant to the application or request of the broker, acting for an insured other than oneself, is deemed to have

authorized the broker to receive on its behalf payment of any premium which is due on the insurance policy at the time of its issuance or delivery.

SECTION 57. AMENDMENT. Section 26.1-26-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-09. Exceptions to licensing requirements. No license as an insurance agent, insurance broker, or surplus lines insurance broker is required of:

1. Any regular salaried officer or employee of an insurance company, licensed insurance agent, insurance broker, or surplus lines insurance broker if the officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance. Nothing in this chapter may be construed to require an insurer to obtain an insurance producer license. In this section, the term "insurer" does not include an insurer's officers, directors, employees, subsidiaries, or affiliates.
2. Any A license as an insurance producer is not required of the following:
 - a. An officer, director, or employee of an insurer or of an insurance producer, provided that the officer, director, or employee does not receive any commission on policies written or sold to insure risks residing, located, or to be performed in this state and;
 - (1) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these, and are only indirectly related to the sale, solicitation, or negotiation of insurance; or
 - (2) The officer, director, or employee's function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or
 - (3) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance.
 - b. A person who secures and furnishes information for the purpose of group or ~~wholesale~~ life insurance, group property and casualty insurance, group annuities, or group, or blanket, or franchise accident and health insurance, or for the purpose of enrolling individuals under such plans or issuing certificates under such plans or otherwise assisting in administering such plans, or performs administrative services related to mass-marketed property and casualty insurance, where no commission is paid to the person for the service.
3. c. Employers An employer or association or ~~their~~ its officers or, directors, employees, or the trustees of any an employee trust plan, to the extent that the employers, officers, employees, directors, or trustees are engaged in the administration or operation of any a program of employee benefits for their own

~~employees of the employer's or association's own employees or the employees of their subsidiaries or affiliates involving, which program involves the use of insurance issued by a licensed insurance company; provided, that an insurer, as long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing the insurance contracts.~~

4. ~~Employees of a creditor who enrolls debtors under a group policy; provided, that the employees receive no commission or other compensation directly related to the enrollment.~~
- ~~d. An employee of an insurer or an organization employed by an insurer or an organization who inspects, rates, or classifies risks or supervises the training of insurance producers and who is not individually engaged in the sales, solicitation, or negotiation of insurance.~~
 - ~~e. A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this state.~~
 - ~~f. A person who is not a resident of this state who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.~~
 - ~~g. A salaried full-time employee who counsels or advises that person's employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission.~~
 - ~~h. An employee of an insurer or of an insurance producer who responds to requests from existing policyholders on existing policies provided that employee is not directly compensated based on the volume of premiums that may result from these services and provided that employee does not sell, solicit, or negotiate insurance.~~

SECTION 58. AMENDMENT. Section 26.1-26-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-10. Consultant - Exceptions to licensing requirement. ~~An individual, partnership, limited liability partnership, corporation, or limited liability company~~ A person may not act as an insurance consultant until licensed as such by the commissioner. However, a license as an insurance consultant is not required of:

1. An attorney licensed to practice law in this state acting in the attorney's professional capacity.
2. A licensed insurance ~~agent, insurance broker,~~ producer or surplus lines insurance ~~broker~~ producer.
3. A trust officer of a bank acting in the normal course of the trust officer's employment.
4. An actuary or a certified public accountant who provides information, recommendations, advice, or services in the actuary's or the certified public accountant's professional capacity.

¹³⁹ **SECTION 59. AMENDMENT.** Section 26.1-26-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-11. License of ~~agent or broker~~ insurance producer - Lines of insurance. An insurance ~~agent, insurance broker,~~ producer or surplus lines insurance ~~broker~~ producer may receive a license to market products under one or more of the following lines:

1. Life and annuity means insurance coverage on human lives including benefits of endowment, annuities, and credit life.
2. Accident and health means insurance coverage for sickness, disease, injury, accidental death, and disability.
3. Property means insurance coverage for direct and consequential loss of or damage to property of every kind.
4. Casualty means insurance coverage against legal liability including that for death, injury, or disability or damage to real or personal property.
5. Variable life and annuity means insurance coverage provided under variable life insurance contracts, and variable annuities, ~~or any other life insurance or annuity that reflects the investment experience of a separate account.~~

The product types found under each of the above lines of insurance are those adopted pursuant to section ~~26.1-15-02.1~~ 26.1-05-02.1.

SECTION 60. Section 26.1-26-13.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-13.1. Appointments.

1. An insurance producer may not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

¹³⁹ Section 26.1-26-11 was also amended by section 8 of House Bill No. 1049, chapter 55.

2. To appoint an insurance producer as its agent, the appointing insurer shall file a notice of appointment within thirty days from the later of the date the agency contract is executed or the first insurance application is submitted. The notice must be in a format approved by the insurance commissioner. An insurer may also appoint an insurance producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.
3. An insurer shall pay an appointment fee for each insurance producer appointed by the insurer in the amount and method of payment set forth in section 26.1-01-07.
4. An insurer shall remit, in a manner prescribed by the commissioner, a renewal appointment fee in the amount set forth in section 26.1-01-07.

SECTION 61. Section 26.1-26-13.2 of the North Dakota Century Code is created and enacted as follows:

26.1-26-13.2. Application for examination.

1. A resident individual applying for an insurance producer license or an insurance consultant license must pass a written examination unless exempt under section 26.1-26-25. The examination must test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer or consultant, and the insurance laws and regulations of this state. The individual must pass the examination with a grade determined by the commissioner to indicate satisfactory knowledge and understanding of the area of insurance for which the individual seeks qualification.
2. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in section 26.1-01-07.
3. An individual applying for an examination must remit a nonrefundable fee as prescribed by the commissioner as set forth in section 26.1-01-07.
4. An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination provided the individual remits all required fees and forms before being rescheduled for another examination.

SECTION 62. Section 26.1-26-13.3 of the North Dakota Century Code is created and enacted as follows:

26.1-26-13.3. Application for license.

1. An individual applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner must find that the individual:

- a. Is at least eighteen years of age;
 - b. Has not committed any act that is a ground for denial, suspension, or revocation set forth in section 26.1-26-42;
 - c. Has completed, within six months of the filing of the application for licensure, an approved preclicensing course of study for the lines of authority for which the individual has applied;
 - d. Has paid the fees set forth in section 26.1-01-07; and
 - e. Has successfully passed the examinations for the lines of authority for which the individual has applied.
2. A business entity acting as an insurance producer must obtain an insurance producer license. Application must be made using the uniform business entity application. Before approving the application, the commissioner must find that:
- a. The business entity has paid the fee set forth in section 26.1-01-07;
 - b. The business entity has designated a licensed individual principal insurance producer responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; and
 - c. The individual designated as the licensed principal insurance producer of the business entity has taken the examination required by section 26.1-26-13.2. The business entity may only be licensed for those lines of insurance for which one or more of its principal insurance producers is licensed. The business entity shall inform the commissioner within ten working days of any change in the status of its principal insurance producer or producers.
 - d. The commissioner may require any documents reasonably necessary to verify the information contained in an application.

SECTION 63. AMENDMENT. Section 26.1-26-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-17. License requirement - Surplus lines insurance ~~broker~~ - Resident insurance agent's or insurance broker's license producer. An applicant for a license as a surplus lines insurance ~~broker~~ producer must be licensed in this state as a ~~resident insurance agent~~ or an insurance ~~broker~~ producer qualified as to the line or lines to be written.

SECTION 64. AMENDMENT. Section 26.1-26-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-20. Nonresident license - Must hold like license elsewhere licensing. An applicant may qualify for a nonresident license if the applicant holds a like resident license from a state, province of Canada, or other foreign country. A license issued to a nonresident of this state grants the same rights and privileges afforded a resident licensee.

1. Unless denied licensure pursuant to this chapter, the commissioner shall issue a nonresident person a nonresident insurance producer license if:
 - a. The person is currently licensed as a resident and is in good standing in the person's home state;
 - b. The person has submitted the proper request for licensure and has paid the fees required by section 26.1-01-07;
 - c. The person has submitted or transmitted to the commissioner either the person's home state application for licensure or a completed uniform application; and
 - d. The person's home state awards nonresident insurance producer licenses to residents of this state on the same basis.
2. The commissioner may verify the insurance producer's licensing status through the insurance producer data base maintained by the national association of insurance commissioners, its affiliates, or subsidiaries.
3. A nonresident insurance producer who moves from one state to another state or a resident insurance producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. A fee or license application is not required.
4. Notwithstanding any other provision of this chapter, a person licensed as a surplus lines insurance producer in the person's home state is entitled to receive a nonresident surplus lines insurance producer license pursuant to subsection 1. Except as to subsection 1, nothing in this section otherwise amends or supersedes any provision of chapter 26.1-44.
5. Notwithstanding any other provision of this chapter, a person licensed as a limited line credit insurance or other type of limited lines insurance producer in the person's home state is entitled to receive a nonresident insurance producer license, pursuant to subsection 1, granting the same scope of authority as granted under the license issued by the insurance producer's home state. For the purpose of this subsection, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to section 26.1-26-11.
6. A nonresident insurance producer shall pay a biennial continuation fee of twenty-five dollars.

SECTION 65. AMENDMENT. Section 26.1-26-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-25. Exceptions from examination. The requirement for a written examination is subject to the following exceptions:

1. An applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a like resident license in this state, other than a temporary license, within the twelve months next

preceding the date of application, unless the previous license was suspended or revoked by the commissioner. An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state may not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's insurance producer data base records, maintained by the national association of insurance commissioners, its affiliates, or subsidiaries, indicate that the insurance producer is or was licensed in good standing for the line of authority requested.

2. A nonresident applicant may be licensed without examination if the public official having supervision of insurance in the state of the applicant's residence certifies, by facsimile signature and seal, that the applicant has passed a similar written examination, or has been a continuous holder prior to the time the written examination was required, of a license like the license being applied for in this state. A person licensed as an insurance producer in another state who moves to this state shall make application within ninety days of establishing legal residence in this state to become a resident licensee pursuant to section 26.1-26-13.2. A prelicensing education or examination may not be required of that person to obtain any line of authority previously held in the prior state except where the commissioner determines otherwise by rule.
3. An applicant who has been licensed under a like license in another state within twelve months prior to the application for a license in this state, and who files with the commissioner the certificate of the public official having supervision of insurance in the other state, by facsimile signature and seal, as to the applicant's license and good standing in such state; provided, however, that the applicant shall take that portion of the examination pertaining to state laws and rules.
4. An applicant who has attained the designation of chartered life underwriter is only required to take that portion of the examination for lines one and five pertaining to state laws and rules.
5. An applicant who has attained the designation of chartered property and casualty underwriter is only required to take that portion of the examination for lines three and four pertaining to state laws and rules.
6. An applicant may be licensed without examination to market a specific product type if the commissioner finds by rule the specific product type does not require the same professional competency demanded for other product types.
7. 4. An applicant for a license to write only a specific product type may be licensed subject to reduced examination requirements if the commissioner finds by rule that the requirements for licensure would otherwise be too burdensome and unrelated to that specific product type.

SECTION 66. Section 26.1-26-25.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-25.1. Assumed names. An insurance producer doing business under any name other than the insurance producer's legal name is required to notify the commissioner before using the assumed name.

SECTION 67. AMENDMENT. Section 26.1-26-26 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-26. Temporary license as an agent or broker insurance producer. The commissioner may issue a temporary license as an insurance ~~agent or insurance broker~~ producer for a period not to exceed ~~ninety one~~ one hundred eighty days without requiring an examination if the commissioner determines that the temporary license is necessary for the servicing of an insurance business in the following cases:

1. To the surviving spouse, next of kin, administrator, executor, or employee of a licensed insurance ~~agent~~ producer who died, or to the spouse, next of kin, employee, or legal guardian of a licensed insurance ~~agent or insurance broker~~ producer who became disabled.
2. To a member or employee of a ~~partnership, officer or employee of a corporation, or manager or employee of a limited liability company~~ business entity, licensed as an insurance ~~agent~~ producer, upon the death or disability of an individual ~~registered with~~ designated as the principal insurance producer in the business entity application or the license.
3. To the designee of a licensed insurance ~~agent~~ producer entering upon active service in the armed forces of the United States.
4. In any other circumstance where the commissioner determines that the public interest will best be served by the issuance of the license.

SECTION 68. AMENDMENT. Section 26.1-26-30 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-30. Contents of license. The license shall state the name, ~~resident~~ address, social security number, personal identification number, or internal revenue service identification number of the licensee, date of issue, and the line or lines of insurance covered by the license, and any other information the commissioner determines to be proper for inclusion in the license.

SECTION 69. Section 26.1-26-30.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-30.1. Vendor authority. In order to assist in the performance of the commissioner's duties, the commissioner may contract with nongovernmental entities, including the national association of insurance commissioners or any affiliates or subsidiaries that the national association of insurance commissioners oversees, to perform any ministerial functions, including the collection of fees, related to insurance producer licensing that the commissioner and the nongovernmental entity may deem appropriate.

SECTION 70. AMENDMENT. Section 26.1-26-31 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-31. Term of license. A license issued under this chapter continues in force in perpetuity unless:

1. The license is suspended, revoked, or refused by the commissioner;
2. The licensee voluntarily consents to the suspension, revocation, or refusal of the license;
3. The licensee dies or in the case of a ~~corporation, partnership, limited liability partnership, or limited liability company~~ business entity, the licensee is dissolved, consolidated, merged, or otherwise has ceased to exist;
4. The licensee no longer meets the residence requirements of section 26.1-26-19;
5. ~~The insurance agent or limited insurance representative is terminated or nonrenewed by all appointing insurers;~~
6. ~~The insurance broker or surplus lines insurance broker producer has failed to maintain a bond as required by section 26.1-26-18, has failed to maintain a resident or nonresident license as an insurance agent producer as required by section 26.1-26-16 26.1-26-17, or has failed to pay the annual renewal fee to the commissioner; or~~
7. 6. The insurance consultant has failed to pay the annual renewal fee to the commissioner.

SECTION 71. AMENDMENT. Section 26.1-26-31.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-31.1. Continuing education required - Exceptions.

1. Except as otherwise provided in this ~~section~~ chapter, any person licensed as an insurance ~~agent, insurance broker, surplus lines insurance broker, producer~~ or insurance consultant shall provide the commissioner evidence, as required by the commissioner, that the person attended or participated in continuing education of not less than fifteen hours per year of approved coursework, of which seven and one-half hours per year must be classroom hours. The commissioner may waive the requirement of seven and one-half hours per year of classroom hours. The commissioner may reduce or waive the minimum number of hours per year of approved coursework for any person having a license limited to a specific product type. The continuing education advisory task force may recommend granting up to fifteen hours continuing education credit for nationally recognized insurance education correspondence programs. The commissioner shall review the task force's recommendation, and the commissioner may approve up to fifteen hours of credit. Credit for courses attended in any one year over the minimum number of hours of coursework required may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at the end of each

two-year period following licensure. No continuing education is required of an ~~agent licensed for the sale of life insurance or sickness, accident, and health insurance; or both,~~ producer who is at least sixty-two years of age, and who has a combined total years of continuous licensure as ~~such agent~~ an insurance producer and years of age which equals eighty-five, ~~and whose commissions from new business each year do not exceed ten thousand dollars.~~ No continuing education is required of an insurance agent who sells only group credit life or group credit accident and health insurance to cover an indebtedness.

2. The commissioner shall by rule divide the persons subject to this section into two equal segments for the purpose of reporting, as follows:
 - a. One-half of the persons shall file their report showing at least the minimum number of required hours of approved coursework for the previous two years within thirty days of January first of every odd-numbered year.
 - b. One-half of the persons shall file a report showing at least the minimum number of required hours of approved coursework for the previous two years within thirty days of January first of every even-numbered year.
3. All persons licensed after January 1, 1989, shall report within thirty days of the first day of January of the year following the second anniversary of the person's licensure.

SECTION 72. 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 ~~26.1-26-15.1~~ 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 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 73. AMENDMENT. Section 26.1-26-32 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-32. Renewal of appointments and licenses - Annual fee. An appointment of an insurance ~~agent~~ producer and the license of an ~~insurance broker,~~ a surplus lines insurance broker, producer or insurance consultant terminates upon failure to pay the prescribed annual renewal fees before May first.

SECTION 74. AMENDMENT. Section 26.1-26-33 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-33. Notification of address change - Duty of licensee. Every licensee shall notify the commissioner of any change in the licensee's residential or business address or legal name within thirty days of the change. Any licensee who ceases to maintain residency in this state shall deliver the insurance license to the commissioner by personal delivery or by mail within thirty days after terminating residency.

SECTION 75. AMENDMENT. Section 26.1-26-34 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-34. Termination reports by insurer - Duty of insurer - Information furnished privileged in civil action Notification to commissioner of termination. ~~If an appointment is terminated for any of the grounds listed in this chapter, or for cause as defined by the insurer involved, the insurer shall promptly give written notice of the termination and the effective date of the termination to the commissioner and to the licensee where reasonably possible. The commissioner may require the insurer to demonstrate that the insurer has made a reasonable effort to notify the licensee.~~

~~All notices of termination must be filed in due course on forms prescribed by the commissioner stating the grounds and circumstances of termination.~~

~~Any information, document, record, or statement provided pursuant to this section may be used by the commissioner in any action taken pursuant to sections 26.1-26-42, 26.1-26-43, and 26.1-26-50; however, the information is privileged in any civil action between the reporting insurer and the terminated licensee.~~

1. Termination for cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with an insurance producer shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner, if the reason for termination is one of the reasons set forth in section 26.1-26-42 or the insurer has knowledge the insurance producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in section 26.1-26-42. Upon the written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the insurance producer.
2. Termination without cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with an insurance producer for any reason not set forth in section 26.1-26-42, shall notify the commissioner within thirty days following the effective date of the termination, using a format prescribed by the commissioner. Upon written request of the commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.
3. Ongoing notification requirement. The insurer or the authorized representative of the insurer shall promptly notify the commissioner in a format acceptable to the commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the commissioner in accordance with subsection 1 had the insurer then known of the information's existence.

4. Copy of notification to be provided to insurance producer.
 - a. Within fifteen days after making the notification required by subsections 1, 2, and 3, the insurer shall mail a copy of the notification to the insurance producer at the insurance producer's last-known address. If the insurance producer is terminated for cause for any of the reasons listed in section 26.1-26-42, the insurer shall provide a copy of the notification to the insurance producer at the insurance producer's last-known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.
 - b. Within thirty days after the insurance producer has received the original or additional notification, the insurance producer may file written comments concerning the substance of the notification with the commissioner. The insurance producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments become a part of the commissioner's file and must accompany every copy of a report distributed or disclosed for any reason about the insurance producer as permitted under subsection 6.
5. Immunities.
 - a. In the absence of actual malice, an insurer, the authorized representative of the insurer, an insurance producer, the commissioner, or an organization of which the commissioner is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies is not subject to civil liability, and a civil cause of action of any nature does not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the commissioner, from an insurer or insurance producer; or a statement by a terminating insurer or insurance producer to an insurer or insurance producer limited solely and exclusively to whether a termination for cause under subsection 1 was reported to the commissioner, provided that the propriety of any termination for cause under subsection 1 is certified in writing by an officer or authorized representative of the insurer or insurance producer terminating the relationship.
 - b. In any action brought against a person who may have immunity under subdivision a for making any statement required by this section or providing any information relating to any statement that may be requested by the commissioner, the party bringing the action shall plead specifically in any allegation that subdivision a does not apply because the person making the statement or providing the information did so with actual malice.
 - c. Subdivision a or b does not abrogate or modify any existing statutory or common law privileges or immunities.
6. Confidentiality.

- a. Any documents, materials, or other information in the control or possession of the insurance department that is furnished by an insurer, insurance producer, or an employee or agent thereof acting on behalf of the insurer or insurance producer, or obtained by the commissioner, in an investigation pursuant to this section is confidential and privileged, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's duties.
- b. Neither the commissioner nor any person who receives 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 subdivision a.
- c. In order to assist in the performance of the commissioner's duties under this chapter, the commissioner:
 - (1) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subdivision a, with other state, federal, and international regulatory agencies, with the national association of insurance commissioners, its affiliates, or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;
 - (2) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information from the national association of insurance commissioners, its affiliates or 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
 - (3) May 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 shall not be waived as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph 3.
 - (5) Nothing in this chapter prohibits the commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection to a data base or other clearinghouse service maintained by the national association of insurance commissioners, its affiliates, or subsidiaries of the national association of insurance commissioners.

7. Penalties for failing to report. An insurer, the authorized representative of the insurer, or insurance producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with sections 26.1-26-42, 26.1-26-43, and 26.1-26-50.

SECTION 76. AMENDMENT. Section 26.1-26-36 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-36. Surplus lines insurance ~~broker's~~ producer's authority. A surplus lines insurance ~~broker~~ producer may act as a surplus lines insurance ~~broker~~ producer in this state for any foreign company or insurer not authorized to transact business in this state in securing, issuing, or placing insurance policies, indemnity contracts, or surety bonds on property located in, or undertakings to be carried out in, this state for the company or insurer. A surplus lines insurance ~~broker~~ producer may accept business from any licensed ~~agent~~ insurance producer for an admitted company and may compensate the ~~agent~~ insurance producer for the business, provided the insurance is written in conformity with this title.

SECTION 77. AMENDMENT. Section 26.1-26-41 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-41. Prohibited activities by consultants. No licensed consultant may employ, be employed by, or be in partnership, limited liability partnership, or limited liability company with nor receive any remuneration whatsoever from any licensed insurance ~~agent~~, ~~insurance broker~~ producer, surplus lines insurance ~~broker~~ producer, or insurer arising out of activities as a consultant. No person may concurrently hold a consultant's license and a license as an insurance ~~agent~~, ~~insurance broker~~, producer or surplus lines insurance ~~broker~~ producer in any line.

SECTION 78. AMENDMENT. Section 26.1-26-42 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-42. License suspension, revocation, or refusal - Grounds. The commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

1. A materially untrue statement in the license application.
2. An acquisition or attempt to acquire a license through misrepresentation or fraud.
3. The applicant has been found to have been cheating on an examination for an insurance license.
4. Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance.
5. ~~A conviction~~ The applicant or licensee has been convicted of a felony or convicted of an offense, as defined by section 12.1-01-04, determined by the commissioner to have a direct bearing upon a person's ability to

- serve the public as an insurance ~~agent, insurance broker producer,~~ insurance consultant, or surplus lines insurance ~~broker producer,~~ or the commissioner finds, after conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.
6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.
 7. A misrepresentation of the terms of any actual or proposed insurance contract.
 8. The licensee has been found to have knowingly solicited, procured, or sold unnecessary, or excessive insurance coverage to any person.
 9. The licensee has forged another's name to an application for insurance.
 10. An improper withholding of, misappropriating of, or converting to one's own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of one's insurance business.
 11. The licensee has been found guilty of any unfair trade practice defined in this title or fraud.
 12. A violation of or noncompliance with any insurance laws of this state or a violation of or noncompliance with any lawful rules or orders of the commissioner or of a commissioner of another state.
 13. The licensee's license has been suspended or revoked in any other state, province, district, or territory for any reason or purpose other than noncompliance with continuing education programs, or noncompliance with mandatory filing requirements imposed upon a licensee by the state, province, district, or territory provided the filing does not directly affect the public interest, safety, or welfare.
 14. The applicant or licensee has refused to respond within twenty days to a written request by the commissioner for information regarding any potential violation of this section.
 15. Without express prior written approval from the commissioner, the licensee communicates with a person who the licensee knows has contacted the department regarding an alleged violation committed by the licensee in an attempt to have the complainant dismiss the complaint.
 16. The licensee knowingly accepts insurance business from an individual who is not licensed.
 17. The applicant or licensee knowingly fails to comply with a court order imposing child support obligation.
 18. The applicant or licensee knowingly fails to pay state income tax or comply with a court order directing payment of state income tax.

SECTION 79. AMENDMENT. Section 26.1-26-43 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-43. License suspension, revocation, or refusal - Partnership, corporation, or limited liability company Business entity - Additional ground. The license of a ~~partnership, corporation, or limited liability company~~ business entity may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers, or managers acting on behalf of the ~~partnership, corporation, or limited liability company~~ business entity and the violation was not reported to the commissioner nor corrective action taken in relation to the violation.

SECTION 80. Section 26.1-26-45.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-45.1. Reporting of actions.

1. An insurance producer shall report to the commissioner any administrative action taken against the insurance producer's license in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report must include a copy of the order, consent to order, or other relevant legal documents.
2. Within thirty days after a criminal conviction, an insurance producer shall report to the commissioner any criminal conviction of the insurance producer taken in any jurisdiction. The report must include a copy of the initial complaint, the order issued by the court, and any other relevant legal documents.

SECTION 81. Section 26.1-26-47.1 of the North Dakota Century Code is created and enacted as follows:

26.1-26-47.1. Reciprocity.

1. The commissioner shall waive any requirements for a nonresident license applicant with a valid license from the insurance producer's home state, except the requirements imposed by section 26.1-26-20, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.
2. A nonresident insurance producer's satisfaction of the insurance producer's home state's continuing education requirements for licensed insurance producers constitutes satisfaction of this state's continuing education requirements if the nonresident insurance producer's home state recognizes the satisfaction of its continuing education requirements imposed upon insurance producers from this state on the same basis.

SECTION 82. AMENDMENT. Section 26.1-26-48 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-48. Commissioner may make examinations and investigations. Whenever the commissioner believes that this chapter has been violated, the commissioner, at the expense of the insurer involved, may examine, at the offices of the insurer or insurance producer, whether located within or without this state, all books, records, and papers of the insurer or insurance producer and any books, records, and papers of any insured within this state, and may examine under oath,

the officers, managers, and ~~agents~~ insurance producers of the insurer, or the insured, as to the violation.

SECTION 83. AMENDMENT. Section 26.1-26-52 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26-52. Insurance license for automobile rental agencies - Exception. A license as an insurance agent ~~or limited insurance representative producer~~ is not required for the counter sales personnel of an automobile rental company or its franchisee if:

1. The automobile rental company is appropriately licensed in this state under subsection 2 of section 26.1-26-08 ~~26.1-26-08~~ 26.1-26-13.3 or is affiliated with an appropriately licensed North Dakota ~~agent~~ insurance producer.
2. The coverage offered by the counter sales personnel is limited to the following:
 - a. Personal accident insurance covering the risks of travel, including accident and health insurance that provides coverage to renters and other rental vehicle occupants for accidental death or dismemberment and for medical expenses resulting from an accident that occurs during the rental period;
 - b. Supplemental liability insurance that must include uninsured and underinsured motorist coverage, either offered separately or in combination with other liability insurance, and that provides coverage to renters and other authorized drivers for liability arising from the operation of the rental vehicle;
 - c. Personal effects insurance that provides coverage to renters and other vehicle occupants for the loss of, or damage to, personal effects that occurs during the rental period;
 - d. Roadside assistance and emergency sickness protection programs; and
 - e. Any other coverage that a rental company offers in connection with and incidental to the rental of vehicles.
3. The rental period is ninety days or less.
4. The automobile rental company files an acknowledgement with the commissioner that its counter sales personnel act on its behalf and that it is responsible for any representations made by the counter sales personnel relating to insurance products offered through the automobile rental company or its franchisee. The acknowledgement must state that the commissioner has the right to take any administrative action contemplated in this title, including revocation or suspension of the license required under subsection 1.
5. The automobile rental company provides basic training to counter sales personnel in the insurance products offered under this section. The training must require counter sales personnel to refer all customers with questions regarding the insurance products offered under this section to appropriately licensed ~~agents~~ insurance producers employed by the

automobile rental company or to written brochures or other materials that:

- a. Summarize the material terms of the coverage, including the identity of the insurer;
 - b. Disclose that the policies offered by the automobile rental company may duplicate coverage already provided by other insurance the renter may have;
 - c. State that the purchase of insurance is not required to rent the vehicle; and
 - d. Describe the process of filing a claim.
6. The counter sales personnel are not directly paid by an insurance company, a commission, or any other compensation for the sale of insurance. Nothing in this section prevents the automobile rental company from including the insurance products in an overall employee performance compensation incentive program.

SECTION 84. AMENDMENT. Section 26.1-26.1-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.1-01. Definitions. For the purposes of this chapter, an "independent insurance ~~agent~~ producer" means any licensed property and casualty insurance ~~agent~~ producer representing a property and casualty insurance company on an independent contractor basis and not as an employee. This term includes only those ~~agents~~ producers not obligated by contract to place property and casualty insurance accounts with any insurance company or group of companies. This chapter only applies to contracts which have been in effect for more than one year between an independent insurance ~~agent~~ producer and a property and casualty insurance company.

SECTION 85. AMENDMENT. Section 26.1-26.1-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.1-02. ~~Agent~~ Producer and company rehabilitation. In an effort to avoid termination, a property and casualty insurance company and an independent insurance ~~agent~~ producer may endeavor to reach mutual agreement on a written plan for rehabilitation for a period of time agreed upon by them. Any written plan agreed upon must identify the problem areas and specify what the ~~agent~~ insurance producer must do in order to avoid termination.

SECTION 86. AMENDMENT. Section 26.1-26.1-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.1-03. Notice of termination. Contracts between an independent insurance ~~agent~~ producer and any property and casualty insurance company may not be terminated or amended by the company except by mutual agreement or unless ninety-day prior written notice has been provided to the independent insurance ~~agent~~ producer. The rate of commission and renewal terms must be in accordance with those in effect immediately prior to the termination.

SECTION 87. AMENDMENT. Section 26.1-26.1-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.1-04. Termination of agents insurance producers for cause - Exceptions. This chapter does not apply to terminations for abandonment, insolvency of the terminating company, gross and willful misconduct, refusal, suspension, revocation, or termination of the ~~agent's~~ insurance producer's license by the commissioner of insurance, sale or material change or ownership of agency, fraud, material misrepresentation or failure to pay an independent insurance ~~agent's~~ producer's account less the independent insurance ~~agent's~~ producer's commission and any disputed items within thirty days after written demand by the company.

SECTION 88. AMENDMENT. Subdivision b of subsection 3 of section 26.1-26.3-01 of the North Dakota Century Code is amended and reenacted as follows:

- b. Acts as an ~~agent~~ insurance producer for the insurer whether known as a managing general agent, manager, or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced:
 - (1) Adjusts or pays claims in excess of an amount determined by the commissioner; or
 - (2) Negotiates reinsurance on behalf of the insurer.

SECTION 89. AMENDMENT. Subsections 1 and 2 of section 26.1-26.3-02 of the North Dakota Century Code are amended and reenacted as follows:

1. No individual, partnership, corporation, or limited liability company may act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the individual, partnership, corporation, or limited liability company is licensed as an insurance ~~agent~~ producer in this state.
2. An individual, partnership, corporation, or limited liability company may not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the individual, partnership, corporation, or limited liability company is licensed as either a resident or nonresident insurance ~~agent~~ producer in this state pursuant to the provisions of this title.

SECTION 90. AMENDMENT. Subdivision c of subsection 10 of section 26.1-26.3-03 of the North Dakota Century Code is amended and reenacted as follows:

- c. Appoint any ~~agent~~ insurance producer without assuring that the ~~agent~~ insurance producer is licensed in the appropriate lines of insurance.

SECTION 91. AMENDMENT. Subsection 6 of section 26.1-26.3-04 of the North Dakota Century Code is amended and reenacted as follows:

6. An insurer shall review its books and records each quarter to determine if any of its ~~agents~~ insurance producers have become, by operation of subsection 3 of section 26.1-26.3-01, a managing general agent as defined in that section. If the insurer determines that an ~~agent~~ insurance producer has become a managing general agent pursuant to the above, the insurer shall promptly notify the ~~agent~~ insurance producer and the commissioner of the determination and the insurer and ~~agent~~ insurance producer shall fully comply with the provisions of this chapter within thirty days.

SECTION 92. AMENDMENT. Subdivision b of subsection 1 of section 26.1-26.3-06 of the North Dakota Century Code is amended and reenacted as follows:

- b. Revocation or suspension of the insurance producer's license; and

SECTION 93. AMENDMENT. Subdivision h of subsection 1 of section 26.1-26.6-05 of the North Dakota Century Code is amended and reenacted as follows:

- h. Knowingly employing a person whose ~~agent~~ insurance producer license has been revoked, suspended, or denied in this or any other state.

SECTION 94. AMENDMENT. Subsection 4 of section 26.1-27-01 of the North Dakota Century Code is amended and reenacted as follows:

4. A life or health ~~agent or broker~~ insurance producer licensed in this state, whose activities are limited exclusively to the sale of insurance.

SECTION 95. AMENDMENT. Section 26.1-28-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-28-02. Sale of insurance through vending machines under certain conditions. ~~Resident insurance agents~~ Insurance producers licensed by the commissioner under this title to solicit applications for and to sell policies of personal travel accident insurance providing benefits for accidental bodily injury or accidental death may also solicit applications for and issue or sell such insurance by means of vending machines supervised by them and placed in locations for the convenience of the traveling public, upon the following conditions:

1. That each policy is reasonably suited for sale and issuance through a vending machine, and that use of a vending machine in a proposed location would be of material convenience to the traveling public.
2. That the type of vending machine proposed to be used is reasonably suitable and practical for the purpose.
3. That reasonable means, as determined by the commissioner, are provided for informing the prospective purchaser of the benefits, limitations, and exclusions of the policy, the premium rates, the name and address of the ~~agent~~ insurance producer, and the name and home office address of the insurer.
4. That the vending machine is constructed and operated to retain, or is provided with a suitable place for deposit and safekeeping of, a copy of

the application, which shows the date of the application, name and address of the applicant and the beneficiary, and the amount of insurance.

5. That no policy of insurance sold through a vending machine may be for a period of time longer than the duration of a specified one-way or round trip not exceeding one hundred eighty days.
6. That the vending machine has provided on it or immediately adjacent thereto, in a prominent location, adequate envelopes for use of purchasers in mailing policies vended through the machine, or that the policy itself, if designed to permit the procedure, may be mailed without an envelope; provided, however, that the commissioner may modify or waive this requirement, by a writing delivered to the ~~agent~~ insurance producer.
7. That each vending machine is supervised, inspected, and tested by the ~~agent~~ insurance producer with such frequency as may reasonably be required by the commissioner, and if any machine is not in good working condition the ~~agent~~ insurance producer shall promptly cause a notice to be displayed on the machine that the machine is out of order, and cause the machine to be promptly removed from service until it is in proper working order.
8. That prompt refund by the ~~agent~~ insurance producer is provided to each applicant or prospective applicant of money deposited in any defective vending machine and for which no insurance, or a less amount than paid for, is actually received.

The commissioner may adopt by rule additional conditions for types and locations of vending machines, their maintenance and operation, and the methods to be used by the ~~agent~~ insurance producer in the solicitation and sale of insurance by means of vending machines as are reasonable and necessary.

SECTION 96. AMENDMENT. Section 26.1-28-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-28-03. Licensing of vending machine devices - Expiration date. The insurance ~~agent~~ producer shall apply for a license for each vending machine to be used. The commissioner shall prescribe the form of the application. A fee of two dollars for each vending machine must be paid at the time of making the application. Upon approval of the application the commissioner shall issue to the ~~agent~~ insurance producer a special vending machine license. The license applies to a specific vending machine or to any machine of identical type which, after written notice by the ~~agent~~ insurance producer to the commissioner, is substituted for it. The license must specify the name and address of the ~~agent~~ insurance producer, the name and home-office address of the insurer, the name or other identifying information of the policy or policies to be sold, the serial number or other identification of the vending machine, and the address, including the location on the premises, where the machine is to be in operation. A vending machine for which a license has been issued for operation at a specific address may be transferred to a different address during the license year upon written notice to the commissioner at the time of the transfer. The license for each vending machine expires April thirtieth of each year, but may be renewed from year to year by the commissioner upon approval of the application of the ~~agent~~ insurance producer, the furnishing of information requested by the commissioner, and the payment of two dollars for each

license year or part thereof for each machine. Proof of the existence of a subsisting license must be displayed on or about each vending machine in use in the manner the commissioner may reasonably require.

SECTION 97. AMENDMENT. Section 26.1-28-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-28-04. Suspension, revocation, or refusal of license - Notice and opportunity to be heard. The license for each vending machine is subject to expiration, suspension, or revocation coincidentally with that of the ~~agent~~ insurance producer or the insurer. The commissioner also may suspend, revoke, or refuse to renew the license as to any vending machine concerning which the commissioner finds any conditions upon which the machine was licensed or referred to in section 26.1-28-02 have been violated, or no longer exist, or that the machine is being used or operated by the ~~agent~~ insurance producer in violation of the laws of this state. Before suspending, revoking, or refusing to renew a license for a vending machine, the commissioner shall conduct a hearing and shall make a determination upon the basis of the standards, conditions, and requirements of this section.

SECTION 98. AMENDMENT. Section 26.1-29-26 of the North Dakota Century Code is amended and reenacted as follows:

26.1-29-26. Representations on information and belief. When a person insured has no personal knowledge of a fact, the person may repeat information which that person has upon the subject and which that person believes to be true with the explanation that that person does so on the information of others, or that person may submit the information in its whole extent to the insurer. In neither case is the person responsible for the truth of the representation unless it proceeds from an ~~agent~~ insurance producer of the insured who has a duty to give the information.

SECTION 99. AMENDMENT. Section 26.1-30.1-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-30.1-01.1. Unlawful grounds for declination. The declination or termination of a commercial insurance policy subject to sections 26.1-30.1-01 through 26.1-30.1-08 by an insurer, ~~agent~~, or ~~broker~~ insurance producer is prohibited if the declination or termination is based solely upon any of the following reasons:

1. The race, religion, nationality, ethnic group, disability, age, sex, or marital status of the applicant or named insured, except this subsection does not prohibit rating differentials based upon age, sex, or marital status.
2. The lawful occupation or profession of the applicant or named insured, except that this provision does not apply to an insurer, ~~agent~~, or ~~broker~~ insurance producer that limits its market to one lawful occupation or profession or to several related occupations or professions.
3. The age or location of the property of the applicant or named insured, unless the decision is for a business purpose that is not a mere pretext for unfair discrimination.

4. The principal location of the insured motor vehicle, unless the decision is for a business purpose which is not a mere pretext for unfair discrimination.
5. The fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.
6. The fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism or an insurance company that insures substandard risks.

SECTION 100. AMENDMENT. Subsection 4 of section 26.1-31.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Licensed producer" means an ~~agent, broker,~~ insurance producer or reinsurance intermediary licensed pursuant to the applicable provision of this title.

SECTION 101. AMENDMENT. Subsection 8 of section 26.1-33-28 of the North Dakota Century Code is amended and reenacted as follows:

8. A policy delivered outside this state through an ~~agent~~ insurance producer or other representative of the company issuing the policy.

SECTION 102. AMENDMENT. Subdivision b of subsection 1 of section 26.1-36-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. A provision that no ~~agent~~ insurance producer has authority to change the policy or to waive any of its provisions.

SECTION 103. AMENDMENT. Section 26.1-36-40 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-40. General penalty - License suspension or revocation. Any person willfully violating any provision of this chapter or order of the commissioner made in accordance with this chapter is guilty of a class A misdemeanor. The commissioner may also suspend or revoke the license of an insurer or ~~agent~~ insurance producer for any such willful violation.

SECTION 104. AMENDMENT. Section 26.1-36.1-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.1-09. General penalty - License suspension or revocation. Any person willfully violating any provision of this chapter or order of the commissioner made in accordance with this chapter is guilty of a class A misdemeanor. The commissioner may also suspend or revoke the license of an insurer or ~~agent~~ insurance producer for any such willful violation.

SECTION 105. AMENDMENT. Subsection 29 of section 26.1-36.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29. "Producer" means insurance ~~agent or insurance broker~~ producer.

SECTION 106. AMENDMENT. Subsection 1 of section 26.1-38.1-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. No person, including an insurer, ~~agent~~ insurance producer, or affiliate of an insurer may make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by chapter 26.1-38.1. Provided, however, that this section does not apply to the North Dakota life and health insurance guaranty association or any other entity that does not sell or solicit insurance.

SECTION 107. AMENDMENT. Subdivision d of subsection 3 of section 26.1-38.1-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- d. State that the insurer and its ~~agents~~ insurance producers are prohibited by law from using the existence of the North Dakota life and health guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

SECTION 108. AMENDMENT. Section 26.1-39-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-06. Standard fire insurance policy. No fire insurance contract or policy, including a renewal, may be made, issued, used, or delivered by any insurer or by any ~~agent~~ insurance producer or representative of the insurer on property in this state other than such as conform in all particulars as to blanks, size of type, context, provisions, agreements, and conditions with the 1943 standard fire insurance policy of the state of New York, a copy of which must be filed in the office of the commissioner as the standard policy for this state. The cancellation provisions contained in the standard policy are superseded to the extent sections 26.1-39-10 through 26.1-39-21 are inconsistent with the provisions. No other or different provision, agreement, condition, or clause may be made a part of the contract or policy or be endorsed on the contract or policy or delivered with the contract or policy, except as follows:

1. The name of the insurer, its location and place of business, the date of its incorporation or organization, and the state or county under which the insurer is organized, the amount of paid-up capital stock, whether it is a stock or mutual company, the names of its officers, the number and the date of the policy, and appropriate company emblems may be printed on policies issued on property in this state; provided, however, that any insurer organized under special charter provisions may so indicate upon its policy and may add a statement of the plan under which it operates in this state.
2. Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on

any particular risk, which facts or conditions may not be inconsistent with or a waiver of any of the provisions or conditions of the standard policy, may be written upon or attached or appended to any policy issued on property in this state. Appropriate forms of contracts, supplemental contracts, or endorsements, whereby the interest in the property described is insured against one or more of the perils which the insurer is empowered to assume, may be used in connection with the standard policy. The forms of contracts, supplemental contracts, or endorsements attached or printed on the policy may contain provisions and stipulations inconsistent with the standard policy if applicable only to the other perils. The first page of the standard policy may be rearranged to provide space for the listing of rates and premiums for coverages insured under the policy or under endorsements attached or printed on the policy, and such other data as may be included for duplication on daily reports for office records.

3. An insurer, if entitled to do business in this state, may with the approval of the commissioner, if not already included in the standard form as filed with the commissioner, print on its policies any provision which it is required by law to insert in the policies if the provision is not in conflict with the laws of this state or the United States, or of the provisions of the standard policy, but the provision must be printed apart from the other provisions, agreements, or conditions of the policy and in type not smaller than the body of the policy and a separate title, as follows: "Provisions required by law to be stated in this policy", and must be a part of the policy.
4. There may be endorsed in writing on the outside of any policy the name, with the word "Agent Producer or Agents Producers" and place of business, of any insurance agent producer or agents producers. There may also be added, with the approval of the commissioner, a statement of the group of companies with which the insurer is financially affiliated.
5. When two or more insurers, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the head line of each policy the fact of the severalty of the contract; also the proportion of premiums to be paid to each insurer and the proportion of liability which each insurer agrees to assume. And in the printed conditions of the policy the necessary change may be made from the singular to plural number, when reference is had to the insurers issuing such policy.
6. With the approval of the commissioner, a combined farm policy may be used, the fire portion of which must be substantially in accord with the standard policy.
7. The standard policy is an interest policy and must be so construed as to at all times protect the interest, whatever it may be, of any named insured. Provided, however, that a five-day grace period is allowed after the execution of any written instrument transferring interest in insured property during which full protection must be granted under the terms of the policy.
8. In case of other coverage on the same peril, the liability of each insurer may not be for any greater amount or proportion of the loss than the

ratio such insurance bears to the valid and collectible whole insurance covering the property against the peril involved.

9. No contract or policy issued under this section may contain a limitation of less than three years for the bringing of any suit or action under the contract or policy.
10. This section does not apply to inland marine, ocean marine, or automobile insurance.

¹⁴⁰ **SECTION 109. AMENDMENT.** Subsections 1 and 2 of section 26.1-39-11 of the North Dakota Century Code are amended and reenacted as follows:

1. "Declination" means the refusal of an insurer to issue a property insurance policy upon receipt of a written nonbinding application or written request for coverage from its ~~agent~~ insurance producer or an applicant. For the purposes of sections 26.1-39-10 through 26.1-39-21, the offering of insurance coverage with a company within an insurance group which is different from the company requested on the nonbinding application or written request for coverage or the offering of insurance upon different terms than requested in the nonbinding application or written request for coverage is considered a declination.
2. "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on property insurance policies subject to sections 26.1-39-10 through 26.1-39-21, whether the payments are directly payable to the insurer or its ~~agent~~ insurance producer or indirectly payable under a premium finance plan or extension of credit. "Nonpayment of premium" includes the failure to pay dues or fees where payment of dues or fees is a prerequisite to obtaining or continuing property insurance coverage.

SECTION 110. AMENDMENT. Subsections 2 and 3 of section 26.1-39-12 of the North Dakota Century Code are amended and reenacted as follows:

2. No insurer not represented by an ~~agent or broker~~ insurance producer may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requires insurance coverage from the insurer.
3. No ~~agent or broker~~ insurance producer, for any reason set out in section 26.1-39-17, may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the ~~agent, broker,~~ insurance producer or insurer.

SECTION 111. AMENDMENT. Subsection 4 of section 26.1-39-16 of the North Dakota Century Code is amended and reenacted as follows:

¹⁴⁰ Section 26.1-39-11 was also amended by section 3 of House Bill No. 1198, chapter 270.

4. Proof of mailing a notice of intention not to renew or business records of the notice of the insurer's willingness to renew must be retained for a period of not less than one year by the insurer or ~~agent or broker~~ insurance producer giving the notice.

SECTION 112. AMENDMENT. Section 26.1-39-17 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-17. Prohibited reasons for declination or termination of property and casualty policies. The declination or termination of a property insurance policy subject to sections 26.1-39-10 through 26.1-39-21 by an insurer, ~~agent,~~ or ~~broker~~ insurance producer is prohibited if the declination or termination is based upon any of the following reasons:

1. The race, religion, nationality, ethnic group, age, sex, or marital status of the applicant or named insured.
2. The lawful occupation or profession of the applicant or named insured, except that this provision does not apply to an insurer that limits its market to one lawful occupation or profession or to several related lawful occupations or professions.
3. The age or location of the residence of the applicant or named insured unless the decision is for a business purpose that is not a mere pretext for unfair discrimination.
4. The fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.
5. The fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism.

SECTION 113. AMENDMENT. Subsection 1 of section 26.1-39-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Whenever the commissioner, upon the filing of a complaint or through the commissioner's own investigation has reason to believe that an insurer, ~~agent,~~ or ~~broker~~ insurance producer has engaged in practices which violate sections 26.1-39-10 through 26.1-39-21 and that a proceeding would be in the public interest, the commissioner shall conduct a hearing.

SECTION 114. AMENDMENT. Section 26.1-39-19 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-19. Immunity. There is no liability on the part of and no claim for relief arises against the commissioner, any insurer or its authorized representatives, agents, or employees, any licensed insurance ~~agent or broker~~ producer, or any person furnishing information to an insurer as to reasons for a termination or declination for any communication giving notice of or specifying the reasons for a declination or termination or for any statement made in connection with an attempt to discover or verify the existence of conditions which would be a reason for a declination or termination under these sections. This section does not apply to statements made in bad faith with malice in fact.

SECTION 115. AMENDMENT. Section 26.1-39-22 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-22. Termination of property and casualty insurance agency contracts. Any insurer authorized to transact property or casualty business in this state, upon termination of an ~~agent's~~ insurance producer's appointment by the insurer, shall permit the renewal and endorsement of all insurance contracts written by the ~~agent~~ insurance producer for a period of one year from the date of the termination, as determined by the individual underwriting requirements of the insurer. If any contract does not meet the underwriting requirements, the insurer shall give the ~~agent~~ insurance producer sixty days' notice of its intention not to renew the contract. This section does not apply if the contract is terminated because of the ~~agent's~~ insurance producer's failure, after receiving a written demand, to pay over moneys due the insurer.

SECTION 116. AMENDMENT. Section 26.1-39-23 of the North Dakota Century Code is amended and reenacted as follows:

26.1-39-23. Temporary insurance - Use of binders. A binder or contract for temporary farm and personal lines of insurance may be made orally or in writing and is deemed to include all the terms of a standard fire insurance policy and all applicable endorsements as may be designated in the binder. However, the cancellation clause of the standard fire insurance policy and the clause specifying the hour of the day at which the insurance commences may be superseded by the express terms of the binder. A duly authorized binder must be accepted as evidence of insurance coverage required as a condition of financing the purchase of property, except that a mortgagee or lender is not required to accept a renewal or extension of the binder. Any insurance ~~agent~~ producer who has express authority to bind farm and personal lines of insurance coverage, and who orally agrees on behalf of an insurer to provide insurance coverage, if requested, shall execute and deliver a written memorandum or binder containing the terms of the oral agreement to the insured within three business days from the time of the oral agreement.

¹⁴¹ **SECTION 117. AMENDMENT.** Subsections 1 and 2 of section 26.1-40-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "Declination" means the refusal of an insurer to issue a policy upon receipt of a written nonbinding application or written request for coverage from its ~~agent~~ insurance producer or an applicant. The offering of insurance coverage with a company within an insurance group which is different from the company requested on the nonbinding application or written request for coverage, or the offering of policy coverage or rates substantially less favorable than requested in the nonbinding application or written request for coverage, is a declination.
2. "Nonpayment of premium" means failure of the insured to discharge when due any of the insured's obligations in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its ~~agent~~

¹⁴¹ Section 26.1-40-01 was also amended by section 4 of House Bill No. 1198, chapter 270.

insurance producer or indirectly under any premium finance plan or extension of credit.

SECTION 118. AMENDMENT. Section 26.1-40-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-07. Proof of notice of termination. A postal service certificate of mailing to the named insured at the address shown in the policy is sufficient proof of notice. Proof of mailing a notice of cancellation or a notice of an intention not to renew, or business records of the notice of the insured's willingness to renew, must be retained for a period of one year by the insurer or ~~agent or broker~~ insurance producer giving the notice.

SECTION 119. AMENDMENT. Subsections 2 and 3 of section 26.1-40-10 of the North Dakota Century Code are amended and reenacted as follows:

2. No insurer not represented by an ~~agent or broker~~ insurance producer may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the insurer.
3. No ~~agent or broker~~ insurance producer, for any reason set out in section 26.1-40-11, may refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the ~~agent, broker,~~ insurance producer or insurer.

SECTION 120. AMENDMENT. Section 26.1-40-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-11. Terminations - Declinations - Prohibited reasons. The declination of an application for, or the termination of, a policy by an insurer, ~~agent,~~ or ~~broker~~ insurance producer is prohibited if the declination or termination is:

1. Based upon the race, religion, nationality, or ethnic group of the applicant or named insured.
2. Based solely upon the lawful occupation or profession of the applicant or named insured, except that this provision does not apply to any insurer, ~~agent,~~ or ~~broker~~ insurance producer which limits its market to one lawful occupation or profession or to several related lawful occupations or professions.
3. Based upon the principal location of the insured motor vehicle unless such decision is for a business purpose which is not mere pretext for unfair discrimination.
4. Based solely upon the age, sex, or marital status of an applicant or an insured, except that this subsection does not prohibit rating differentials based upon age, sex, or marital status.
5. Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism or an insurance company that insures substandard risks.

6. Based upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.

SECTION 121. 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 ~~broker~~ producer licensed under chapter 26.1-26 shall in every case execute and file with the commissioner within fifteen days of the effective date of any surplus line insurance policy, indemnity contract, or surety bond an affidavit in acceptable form that after a diligent search, an inability exists to procure the insurance, indemnity contract, or surety bond desired from an insurer authorized to do business in this state. There is a presumption that such inability exists and that a diligent search has been made if the insurance, indemnity contract, or surety bond provides coverage listed by the commissioner as an approved surplus lines coverage. If the commissioner concurs in the allegation in the affidavit, the commissioner may authorize the procuring of the insurance, indemnity contract, or bond from an insurer not authorized to do business in this state.

SECTION 122. AMENDMENT. Section 26.1-44-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-03. Surplus lines in solvent insurers. A surplus lines insurance ~~broker~~ producer may not knowingly place surplus line insurance with an insurer that is financially unsound. The surplus lines insurance ~~broker~~ producer shall ascertain the financial condition of the unauthorized insurer before placing insurance with the insurer. The surplus lines insurance ~~broker~~ producer may not so insure with:

1. Any insurer having less than five hundred thousand dollars of capital and five hundred thousand dollars in surplus, if a stock company, and five hundred thousand dollars in surplus, if a mutual company.
2. Any alien insurer that has not established an effective trust fund of at least one million dollars within the United States administered by a recognized financial institution and held for the benefit of all its policyholders in the United States or policyholders and creditors in the United States.

SECTION 123. AMENDMENT. Section 26.1-44-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-04. Service of process. Any insurer desiring to transact any business under this chapter, by any surplus lines insurance ~~broker~~ producer in this state, shall appoint in writing the commissioner as its true and lawful attorney, upon whom legal process in any action or proceeding against it must be served, and in the writing, shall agree that any legal process against it, which is served upon the attorney, is of the same legal force and validity as if served upon the insurer, and that the authority continues in force so long as any liability remains outstanding in this state. Copies of the appointment certified by the commissioner are sufficient evidence thereof and must be admitted in evidence with the same force and effect as the original. Legal process may not be served upon the insurer except as provided by this section. In any suit on a policy on behalf of the owner or holder of the policy, the service of process must be made as provided by this section, but the action must be prosecuted in the county of the policyholder's residence.

SECTION 124. AMENDMENT. Section 26.1-44-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-44-05. Endorsement of policy. Every policy issued under this chapter must be endorsed "THIS POLICY IS ISSUED PURSUANT TO THE NORTH DAKOTA SURPLUS LINES INSURANCE STATUTE UNDER THE SURPLUS LINES BROKER'S PRODUCER'S LICENSE OF _____. THE INSURER IS A QUALIFIED SURPLUS LINES INSURER, BUT IS NOT OTHERWISE LICENSED BY THE STATE OF NORTH DAKOTA AND DOES NOT PARTICIPATE IN THE NORTH DAKOTA INSURANCE GUARANTY ASSOCIATION." The surplus lines insurance ~~broker~~ producer shall properly complete the endorsement by typing or printing the ~~broker's~~ producer's full name in the space provided and shall sign and date the endorsement.

SECTION 125. AMENDMENT. Section 26.1-44-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-06. Record of business - Filing of statement - Content. Every surplus lines insurance ~~broker~~ producer shall keep a separate account of the business under the ~~broker's~~ producer's license and on or before the first day of April in each year shall file with the commissioner a statement for the twelve months preceding, giving the name of the insured to whom a policy or indemnity contract granting unauthorized insurance has been issued, the name and home office of each insurer issuing the policy or contract, the amount of the insurance, the rates charged, the gross premiums charged, the date and term of the policy, and the amount of premium returned on each policy canceled or not taken, with such information and upon such form as required by the commissioner, and pay the commissioner an amount equal to the taxes imposed by law on the premiums of authorized insurance companies. If a surplus line policy covers risks or exposures only partially in this state, the tax so payable must be computed upon the portion of the premium which is properly allocable to the risks or exposures located in this state.

SECTION 126. 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 ~~broker~~ 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 shall revoke the surplus lines insurance ~~broker's~~ producer's license of the ~~broker~~ producer if any surplus lines insurance ~~broker~~ producer fails to make and file the annual statement and pay the taxes, or refuses to allow the commissioner to inspect and examine the ~~broker's~~ producer's records of the business transacted by the ~~broker~~ 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 ~~broker~~ 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 ~~broker~~ producer until two years have elapsed from the effective date of the revocation, nor until all taxes and

finances are paid, nor until the commissioner is satisfied that full compliance with this chapter will be had.

SECTION 127. AMENDMENT. Section 26.1-45-04.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-04.1. Adoption of long-term care benefits comparison guides by commissioner. The commissioner of insurance shall adopt rules to create a long-term care benefits comparison guide to be presented at the point of sale between the client and ~~agent~~ insurance producer. The guide must include information regarding nursing home coverage and alternatives to nursing home coverage.

SECTION 128. AMENDMENT. Paragraph 2 of subdivision a of subsection 2 of section 26.1-45-09 of the North Dakota Century Code is amended and reenacted as follows:

- (2) In the case of ~~agent~~ insurance producer solicitations, an ~~agent~~ insurance producer must deliver the outline of coverage prior to the presentation of an application or enrollment form.

SECTION 129. 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 establish minimum standards for correcting abusive marketing practices, replacement forms, ~~agent~~ insurance producer testing, penalties, and reporting practices for long-term care insurance.

SECTION 130. AMENDMENT. Section 26.1-45-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-12. Penalties. In addition to any other penalties provided by the laws of this state, any insurer and any ~~agent~~ insurance producer found to have violated any requirement of this title relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to ten thousand dollars, whichever is greater.

SECTION 131. AMENDMENT. Subsections 3, 4, and 10 of section 26.1-46-03 of the North Dakota Century Code are amended and reenacted as follows:

3. Taxation.
 - a. All premiums paid for coverages within this state to risk retention groups are subject to taxation at the same rate and subject to the same interest, fines, and penalties for nonpayment that are applicable to foreign-admitted insurers.
 - b. To the extent ~~agents or brokers~~ insurance producers are utilized, ~~they~~ the insurance producers shall report and pay the taxes for the premiums for risks which ~~they~~ the insurance producers have placed with or on behalf of a risk retention group not chartered in this state.

- c. To the extent the ~~agents or brokers~~ insurance producers are not utilized or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.
 - d. This subsection does not apply to risk retention groups doing business in this state which have fewer than twenty-six resident members or insureds.
 - e. To the extent that insurance ~~agents or brokers~~ producers are utilized pursuant to section 26.1-46-11, each ~~agent or broker~~ insurance producer shall keep a complete and separate record of all policies procured from each risk retention group, which record must be open to examination by the commissioner, as provided in sections 26.1-03-19.1 through 26.1-03-22. These records must, for each policy and each kind of insurance provided thereunder, include the limit of liability, the time period covered, the effective date, the name of the risk retention group which issued the policy, the gross premium charged, and the amount of return premiums, if any.
4. Compliance with prohibited practices chapter. Any risk retention group, its ~~agents~~ insurance producers and representatives, shall comply with chapter 26.1-04.
 10. Any risk retention group, its ~~agents~~ insurance producers, and representatives shall comply with chapter 26.1-04. The terms of any insurance policy issued by any risk retention group may not provide, or be construed to provide, coverage prohibited generally by statute of this state or declared unlawful by the highest court of this state whose law applies to such policy.

SECTION 132. AMENDMENT. Subsection 8 of section 26.1-46-06 of the North Dakota Century Code is amended and reenacted as follows:

8. Require that any insurance policy issued to a purchasing group or any of its members be countersigned by an insurance ~~agent or broker~~ producer residing in this state.

SECTION 133. AMENDMENT. Subsection 1 of section 26.1-46-08 of the North Dakota Century Code is amended and reenacted as follows:

1. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed ~~agent or broker~~ insurance producer acting pursuant to the surplus lines laws and regulations of such state.

SECTION 134. AMENDMENT. Subsection 2 of section 26.1-46-08.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Paid first by such insurance source, and if not by such source, by the ~~agent or broker~~ insurance producer for the purchasing group, and if not by such ~~agent or broker~~ insurance producer, then by the purchasing

group, and if not by such purchasing group, then by each of its members.

SECTION 135. AMENDMENT. Section 26.1-46-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-46-11. Duty of ~~agents or brokers~~ insurance producers to obtain license. Any person acting, or offering to act, as an ~~agent or broker~~ insurance producer for a risk retention group or purchasing group, which solicits members, sells insurance coverage, purchases coverage for its members located within the state, or otherwise does business in this state, shall, before commencing any such activity, obtain a license from the commissioner. This section does not apply to any person acting as an ~~agent or broker~~ insurance producer for a risk retention group doing business in this state which has fewer than twenty-six resident members or insureds.

SECTION 136. REPEAL. Sections 26.1-26-08, 26.1-26-12, 26.1-26-13, 26.1-26-15.1, 26.1-26-16, 26.1-26-16.1, 26.1-26-16.2, 26.1-26-18, 26.1-26-23, 26.1-26-24, 26.1-26-28, 26.1-26-29, and 26.1-26-38 of the North Dakota Century Code are repealed.

Approved April 12, 2001

Filed April 12, 2001

CHAPTER 263

SENATE BILL NO. 2127

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

INSURANCE INFORMATION DISCLOSURE

AN ACT to create and enact a new section to chapter 26.1-02 of the North Dakota Century Code, relating to prohibiting disclosure by an insurer of nonpublic personal information; and to amend and reenact section 26.1-03-11.3 of the North Dakota Century Code, relating to the insurance commissioner sharing confidential information with other state agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-02 of the North Dakota Century Code is created and enacted as follows:

Disclosing nonpublic personal information. An insurance company, nonprofit health service corporation, or health maintenance organization may not disclose nonpublic personal information contrary to the provisions of title V of the Gramm-Leach-Bliley Act [Pub. L. 106-102; 113 Stat. 1436]. The commissioner may adopt rules as may be necessary to carry out this section. 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". This section does not create a private right of action.

SECTION 2. AMENDMENT. Section 26.1-03-11.3 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03-11.3. Confidentiality. The commissioner shall maintain, as confidential, any confidential documents or information received from the national association of insurance commissioners or state or federal regulatory or law enforcement officials of this state and other states or jurisdictions. The information may not be disclosed by the department and is exempt from section 44-04-18. The commissioner may share information that is confidential under the laws of this state with the national association of insurance commissioners and with state or federal regulatory or law enforcement officials from this state and other states or jurisdictions providing that the officials are required, under their law, to maintain its confidentiality.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 264

HOUSE BILL NO. 1176

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

INSURANCE COMPANY INVESTMENTS

AN ACT to amend and reenact sections 26.1-05-18, 26.1-05-19, 26.1-05-31, 26.1-10-02, subsections 1 and 6 of section 26.1-10-05, sections 26.1-24-10, 26.1-31.2-01, and 26.1-31.2-02 of the North Dakota Century Code, relating to authorized investment of funds of insurance companies and reinsurance credit for a domestic insurer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-05-18 of the North Dakota Century Code is amended and reenacted as follows:

26.1-05-18. Investment of funds must be authorized by directors - Prohibited investment practices. An investment or loan, except a policy loan, may not be made by any domestic insurance company unless the investment or loan first has been authorized by the board of directors of the company or by an investment committee appointed by the board of directors of the company charged with the duty of supervising the making of loans or investments by the company. A domestic insurance company may not:

1. Subscribe to or participate in any underwriting of the purchase or sale of securities or property.
2. Enter into any transaction for the purchase or sale of any securities or property on account of the company jointly with any other person, firm, or corporation, except for authorized real estate joint ventures ~~and~~₁ partnerships, and limited liability companies.
3. Enter into any agreement to withhold any of its property from sale, but the disposition of its property at all times is within the control of its board of directors, except for authorized real estate joint ventures ~~and~~₁ partnerships, and limited liability companies.
4. Invest any of its funds in, or loan the funds upon, the shares of stock of any corporation except as otherwise provided in this chapter.
5. Invest any of its funds in, or loan the funds upon, any bonds or obligations, except government, state, or municipal securities, which are not secured by adequate collateral security ~~to the full extent of the investment,~~ except as otherwise provided in this chapter.
6. Invest its capital, surplus funds, or other assets in, or loan the same upon, any property owned by any officer or director of the company, or by any of the immediate members of the family of any such officer or director, nor in any manner which will permit any such officer or director to gain through the investment of funds of the company.

SECTION 2. AMENDMENT. Section 26.1-05-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-05-19. Authorized investment of funds of insurance companies. A domestic insurance company may invest any of its funds and accumulations in:

1. Securities or obligations made specifically eligible for such investment by law.
2. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, the District of Columbia, or by any state, territory, or insular possession of the United States or by any county, city, township, school district, or other civil division of a state, including loan-backed securities, those payable from special revenues or earnings specifically pledged for the payment thereof, and those payable from special assessments, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
3. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by any instrumentality or agency of the United States of America, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
4. Notes or bonds secured by mortgage or deed of trust insured by the federal housing administrator, debentures issued by the federal housing administrator, and securities issued by national mortgage associations.
5. Bonds issued by the industrial commission under chapter 4-36.
6. Bonds guaranteed under chapter 6-09.2.
7. Bonds issued by the North Dakota municipal bond bank pursuant to chapter 6-09.4.
8. Bonds issued by the state board of higher education under chapter 15-55.
9. Revenue bonds issued by the state water commission.
10. Interim financing notes issued by the state water commission pursuant to chapter 61-02.
11. Warrants issued by a city under chapter 40-24.
12. Bonds or notes issued pursuant to chapter 40-33.2.
13. Bonds or other obligations issued pursuant to chapter 40-58.
14. Bonds issued under chapter 40-61.
15. Bonds issued under chapter 54-30.

16. Notes or other evidences of indebtedness of the North Dakota life and health insurance guaranty association not in default.
17. Notes or other interest-bearing obligations of any state development corporation of which the company is a member, issued in accordance with chapter 10-30.
18. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or any province thereof, or by any municipality or district therein, provided that the obligations are valid and legally authorized and issued.
19. Mortgage bonds and debentures of any solvent railway company duly incorporated and authorized under the laws of this state or of any other state or insular possession of the United States, or of the Dominion of Canada or of any province thereof.
20. Mortgage Obligations, including bonds and debentures of or evidences of indebtedness, or participation in those bonds or evidences of indebtedness, or loan-backed securities, which are issued, assumed, guaranteed, or insured by any solvent industrial public utility or financial corporation legal entity duly incorporated and authorized under the laws of the United States of America or of any state or insular possession thereof, or of the Dominion of Canada or of any province thereof, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
21. Preferred stock, of, or common or preferred stock guaranteed as to dividends by, and common stock of, any corporation organized under the laws of the United States, any state or possession of the United States, the Dominion of Canada, or any province of the Dominion of Canada, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes, subject to the following restrictions and limitations:
 - a. The company issuing the preferred stock or guaranteeing the dividends on the common stock must have earned an average amount per annum at least equal to five percent of the par value of its common and preferred stocks or in the case of stocks having no par value, of its issued or stated value outstanding at the date of purchase, over the period of seven fiscal years immediately preceding the date of purchase or which over such period earned an average annual amount at least equal to two times the total of its annual interest charges, preferred dividends, and dividends guaranteed by it, determined with reference to the date of purchase. Investments in preferred, guaranteed, and common stocks issued or guaranteed by a single person may not exceed three percent of the insurance company's admitted assets.
 - b. The company issuing any common stock must have earned an average amount per annum at least equal to six percent of the par value of its capital stock, or in the case of stock having no par value

of the issued or stated value of such stock, outstanding at the date of purchase over the period of seven fiscal years immediately preceding the date of purchase. Investments in preferred, guaranteed, and common stocks may not exceed in the aggregate the greater of twenty-five percent of admitted assets or one hundred percent of the capital and surplus of a nonlife insurance company.

- c. ~~The company issuing or guaranteeing the stock has not been in arrears in the payment of dividends thereunder for a period of ninety days within the five-year period immediately preceding purchase of the stock.~~
- d. Investments in preferred, guaranteed, and common stocks may not exceed in the aggregate twenty percent of the life insurance company's admitted assets.

For purposes of this section, preferred stock includes mandatory sinking fund preferred stock. Common stock includes shares of mutual funds, master limited partnerships trading as common stock, and American deposit receipts that are traded on a nationally recognized securities exchange or on the national association of securities dealers automated quotations system.

- 22. Savings accounts, under certificates of deposit or in any other form, in solvent banks and trust companies which have qualified for federal deposit insurance corporation protection, shares and savings accounts, under certificates of deposit, investment certificates, or in any other form, in solvent savings and loan associations organized under federal law or state law of any state which have qualified for federal savings and loan insurance corporation protection, and shares and deposit accounts, under certificates of deposit or in any other form, in solvent state or federally chartered credit unions which are insured by the national credit union administration. Investments in the shares and accounts are not limited to, or by, the amount of any such insurance protection. Short-term or liquidity investments such as certificates of deposit, repurchase agreements, bankers' acceptances, commercial paper, money market mutual funds, or current interest accounts in solvent banks and trust companies, savings and loan associations, state or federally chartered credit unions, investment brokerage houses which are regulated by a federal agency, and such other types of investments as may be deemed appropriate and authorized by rule by the commissioner.
- 23. Loans made upon the security of its own policies, if a life insurance company, but no loan on any policy may exceed the reserve value thereof.
- 24. Notes secured by mortgages on ~~improved~~ unencumbered real estate, including construction loans and leaseholds substantially having and furnishing the rights and protection of a first real estate mortgage, within the United States of America or any province of the Dominion of Canada. An investment in a construction loan covering any single parcel of real estate may not exceed one quarter of one percent of the admitted assets of the company. Investments in construction loans in the aggregate may not exceed two percent of the admitted assets of the

company. No loan may be made under this subsection unless at the date of acquisition the total indebtedness secured by such lien does not exceed ~~seventy-five~~ eighty percent of the value of the property upon which it is a lien, provided that the loan requires immediate scheduled payment in periodic installments of principal and interest and periodic payments are made no less frequently than annually. A loan that does not meet these requirements may not exceed ~~seventy-five~~ percent of the value of the property. ~~The~~ A loan may be made in an amount exceeding ~~seventy-five percent so long as any amount over seventy-five percent of these percentage limitations if~~ the value of the property mortgaged in excess of the limitation is guaranteed or insured by the federal housing administration or guaranteed by the administrator of veterans' affairs or is insured by private mortgage insurance through an insurance company authorized to do business in this state. Loans may be amortized on the basis of a final maturity not exceeding thirty years from the date of the loan with an actual maturity date of the loan at any time less than thirty years. A loan on a single-family dwelling where the loan is amortized on the basis of a final maturity twenty-five years or less from the date of the loan may be made in an amount not exceeding eighty percent of the value of the property mortgaged. The loan on a single-family dwelling may be made in an amount exceeding eighty percent so long as any amount over eighty percent of the value of the property mortgaged is insured by private mortgage insurance through an insurance company authorized to do business in this state. Buildings may not be included in the valuation of such property unless they are insured and the policies are made payable to the company as its interest may appear. A loan may not be made in excess of the amount of insurance carried on the buildings plus the value of the land. No insurance company may hold less than the entire loan represented by the bonds or notes described in this subsection except that a company may own part of an aggregate obligation if all other participants in the investment are insurance companies authorized to do business in North Dakota or banks whose depositors are insured by the federal deposit insurance corporation or savings and loan associations whose members are insured by the federal savings and loan insurance corporation or unless the security of the bonds or notes, as well as all collateral papers, including insurance policies, executed in connection therewith, are made to and held by a trustee which is a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of banks or trust companies incorporated under the laws of the state of North Dakota, wherein a paid-in capital of not less than one hundred thousand dollars is required. In case of proper notification of default, the trustee, upon request of at least twenty-five percent of the holders of the bonds outstanding, and proper indemnification, shall proceed to protect the rights of the bondholders under the provisions of the trust indentures. An insurance company may acquire such an interest in real estate directly or as a joint venture, limited liability company, or through a limited or general partnership in which the insurance company is a partner. An insurance company acquiring such an interest in real estate on the basis of a joint venture, limited liability company, or through a limited or general partnership may acquire such an interest so long as the company's interest does not exceed seventy-five percent of the value of the property.

25. First mortgage bonds on improved city real estate in any state, issued by a corporation duly incorporated under the laws of any state of the United States of America, if the loans on the real estate are made in accordance with the requirements as to first mortgage loans in subsection 24.
26. Real estate for the production of income or for improvement or development for the production of income subject to the following provisions and limitations:
 - a. Real estate used primarily for farming or agriculture may not be acquired under this subsection.
 - b. Investments made by any company under this subsection may not at any time exceed ten percent of the admitted assets of the company.
 - c. An investment in any single parcel of real estate acquired under this subsection may not exceed two percent of the admitted assets of the company.
 - d. The real estate, including the cost of improvements, must be valued at cost and the improvements may be depreciated annually at an average rate of not less than two percent of the original cost.
 - e. An insurance company may acquire such real estate or an interest in such real estate directly or as a joint venture, limited liability company, or through a limited or general partnership in which the insurance company is a partner.
27. Land and buildings used as home or regional offices, subject to the following provisions and limitations:
 - a. ~~Land and buildings thereon in which it has its principal office and any other real estate including regional offices requisite for its convenient accommodation in the transaction of its business~~ owned by the company in which the square footage of the property is more than fifty percent occupied by the company and its affiliates.
 - b. Investments or total commitment in the land and buildings may not aggregate more than ten percent of the company's admitted assets without the consent of the commissioner.
 - c. The real estate, including the cost of improvements, must be valued at cost and the improvements must be depreciated annually at an average rate of not less than two percent of the original cost.
28. Investments by loans or otherwise, in the purchase of electric or mechanical machines, including software, constituting a data processing system. The company may hold the system as an admitted asset for use in connection with the business of the company if its aggregate cost does not exceed ~~five~~ three percent of the ~~admitted assets of the company~~ company's capital and surplus and the cost of the components constituting the system is fully amortized over a period of not to exceed ~~seven~~ five years. If a data processing system consists of separate

components acquired at different times, then the cost of each component must be amortized over a period not to exceed ~~seven~~ five years commencing with the date of acquisition of each component.

29. Promissory notes amply secured by the pledge of bonds or other evidences of indebtedness in which the company is authorized to invest its funds by the provisions of this section.
30. Ownership of, or loans secured by first liens upon:
 - a. Production payments or interests therein payable from oil, gas, other hydrocarbons, or other minerals in producing properties located in areas of established and continuing production within the United States or the adjacent continental shelf areas, which production payments are dischargeable from property interests appraised by independent petroleum engineers at the time of the acquisition or loan, based on current market prices, to have a current market value of at least one hundred fifty percent of the purchase price of, or the amount loaned upon the security of, such production payments. The term "production payments" means rights to oil, gas, other hydrocarbons, or other minerals in place or as produced which entitle the owner thereof to a specified fraction or percentage of production or the proceeds thereof, until a specified or determinable sum of money has been received, and which have investment qualities and characteristics in which the speculative elements are not predominant.
 - b. Royalty interests, overriding royalty interests, net profit interests, leasehold interests, working interests, or other interests or rights in oil, gas, other hydrocarbons, or other minerals in place or as produced, which interests or rights may be subject to production payments of the nature described in subdivision a.

No domestic insurance company may invest more than five percent of its admitted assets in the ownership of such interests or rights. In determining the amount invested in such interests or rights at any given time, each insurance company may evaluate such interests or rights in such manner as will permit it to amortize the interests or rights over a period of time during which not more than seventy-five percent of the dollar value of the recoverable production accruing to such interests or rights will be produced, as determined by independent petroleum engineers at the time of investment.

31. Obligations secured by a pledge of personal property, as follows:
 - a. Tangible personal property, or equipment trust certificates or other instruments evidencing an interest in or debt secured by tangible personal property, if there is a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such tangible personal property.
 - b. Bonds, notes, or other evidences of indebtedness secured wholly or partially by tangible personal property, provided that at the date of acquisition the amount of such indebtedness does not exceed sixty-six and two-thirds percent of the value of such tangible personal property.

The aggregate outstanding investment made under subdivisions a and b may not exceed five percent of the admitted assets of the life insurance company.

32. Loans, securities, or investments issued by a small business investment company created by the Myron G. Nelson Fund, Incorporated, and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.].
33. Loans, securities, or investments in addition to those permitted in this section, whether or not the loans, securities, or investments qualify or are permitted as legal investments under its charter, or under other provisions of this section or under other provisions of the laws of this state. The aggregate admitted value of the company's investments under this section may not at any one time exceed either seven percent of the company's admitted assets, or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law, whichever is less.
34. Loans, securities, or investments in a North Dakota low-risk incentive fund organized under chapter 26.1-50. The aggregate admitted value of the company's investment under this subsection may not at anytime exceed the lesser of five percent of the company's admitted assets or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law. A company making an investment under this subsection may value at par any investment purchased at par.
35. Foreign investments of substantially the same types as those permitted under subsections 20 and 21, subject to the following restrictions and limitations:
 - a. Foreign investments issued, assumed, guaranteed, or insured by a single person may not exceed three percent of the insurance company's admitted assets.
 - b. Foreign investments in a single foreign jurisdiction may not exceed in the aggregate ten percent of the insurance company's admitted assets as to a foreign jurisdiction that has a sovereign debt rating of one as determined by the securities valuation office of the national association of insurance commissioners or three percent of the insurance company's admitted assets as to any other foreign jurisdiction.
 - c. Foreign investments may not exceed in the aggregate twenty percent of the insurance company's admitted assets.

Investments acquired under this subsection shall be aggregated with investments of the same type made under subsection 21 for purposes of determining compliance with the limitations contained in that subsection. For purposes of this subsection, a foreign investment means an investment in a foreign jurisdiction or an investment in a legal entity domiciled in a foreign jurisdiction. A foreign jurisdiction is any jurisdiction other than the United States, any state or possession of the

United States, the Dominion of Canada, or any province of the Dominion of Canada.

The commissioner may adopt rules as to investments which are permissible for any domestic insurance company which may waive or increase any limitation on investments or authorize companies to invest their funds in investments which are not specifically mentioned in statutes relating to investments if the commissioner finds, after notice and hearing, that such funds would be well invested and available for the payment of losses. The commissioner, in adopting such rules, may not be any more restrictive, or place any greater limitations on, any type of investment in which companies are authorized by statute to invest their funds.

This section does not prohibit a company from taking any action deemed necessary or expedient for the protection of investments made by it or from accepting in good faith, to protect its interests, securities, or property not mentioned in this section in payment or to secure debts due to it.

SECTION 3. AMENDMENT. Section 26.1-05-31 of the North Dakota Century Code is amended and reenacted as follows:

26.1-05-31. Salaries and expenses of officers and agents of domestic life insurance company - Restrictions. A domestic life insurance company may not:

1. Pay any salary, compensation, or emolument to any senior officer, trustee, or director thereof, amounting in any one year to more than ~~fifty~~ one hundred thousand dollars, unless the payment thereof first is authorized by the board of directors of the company.
2. Grant any pension to any officer, director, or trustee thereof, or to any member of the officer's, director's, or trustee's family after death, except that it may provide a pension in pursuance of the terms of a retirement plan adopted by the board of directors and approved by the commissioner for any person who is or has been a salaried officer or employee of the corporation and who may retire by reason of age or disability.

¹⁴² **SECTION 4. AMENDMENT.** Section 26.1-10-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10-02. Subsidiaries - Additional investment authority - Exception from investment restrictions.

1. Any domestic insurance company, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries ~~engaged in the following kinds.~~ A subsidiary may conduct any kind of business:
 - a. ~~Any kind of insurance business authorized by the jurisdiction in which it is incorporated.~~

¹⁴² Section 26.1-10-02 was also amended by section 28 of Senate Bill No. 2144, chapter 262.

- b. Acting as an insurance broker or as insurance agent for its parent or for any of its parent's insurance company subsidiaries.
 - e. Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary.
 - d. Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services.
 - e. Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended.
 - f. Rendering investment advice to governments, government agencies, corporations, or other organizations or groups.
 - g. Rendering other services related to the operations of an insurance business including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services.
 - h. Ownership and management of assets which the parent corporation could itself own or manage.
 - i. Acting as administrative agent for a governmental instrumentality performing an insurance function.
 - j. Financing of insurance premiums, agents, and other forms of consumer financing.
 - k. Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business.
 - l. Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section and its authority to do so is not limited because it is a subsidiary of a domestic insurer.
2. In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections, a domestic insurance company may also:
- a. Invest, in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ~~five~~ ten percent of the insurance company's admitted assets or fifty percent of the company's surplus as regards policyholders; provided, that after the investments the company's surplus as regards policyholders will be reasonable in relation to the company's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries and health maintenance organizations shall be excluded, and there must be included:

- (1) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities.
 - (2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation.
 - b. Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries; provided, that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurance company to exceed any of the investment limitations specified in subdivision a of subsection 2. "The total investment of the insurance company" includes:
 - (1) Any direct investment by the company in an asset.
 - (2) The company's proportionate share of any investment in an asset by any subsidiary of the company, which must be calculated by multiplying the amount of the subsidiary's investment by the percentage of the company's ownership of such subsidiary.
 - c. With the approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided, that after such investment the insurance company's surplus as regards policyholders will be reasonable in relation to the company's outstanding liabilities and adequate to its financial needs.
3. Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection 2 are not subject to any of the otherwise applicable restrictions or prohibitions applicable to such investments of insurance companies.
 4. Whether any investment pursuant to subsection 2 meets the applicable requirements thereof is to be determined ~~immediately after~~ before such investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the date they were made net of any return of capital invested, not including dividends.
 5. If an insurance company ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within three years from the time of the cessation of control or within such further time as the commissioner prescribes, unless at any time after the investment has been made, the investment has met the requirements for investment under any other section, and the company has so notified the commissioner.

SECTION 5. AMENDMENT. Subsections 1 and 6 of section 26.1-10-05 of the North Dakota Century Code are amended and reenacted as follows:

1. Transactions within a holding company system to which an insurance company subject to registration is a party are subject to the following standards:
 - a. The terms must be fair and reasonable.
 - b. The books, accounts, and records of each party must clearly and accurately disclose the precise nature and details of the transactions including that accounting information that is necessary to support the reasonableness of the charges or fees to the respective parties.
 - c. The insurance company's surplus as regards to policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurance company's outstanding liabilities and adequate to its financial needs.
 - d. Charges or fees for services performed must be reasonable.
 - e. Expenses incurred and payment received must be allocated to the insurance company in conformity with ~~customary insurance~~ statutory accounting practices consistently applied.
6. For purposes of this chapter, in determining whether an insurance company's surplus as regards policyholders is reasonable in relation to the insurance company's outstanding liabilities and adequate to its financial needs, the following factors, among others, must be considered:
 - a. The size of the insurance company as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.
 - b. The extent to which the insurance company's business is diversified among the several lines of insurance.
 - c. The number and size of risks insured in each line of business.
 - d. The extent of the geographical dispersion of the insurance company's insured risks.
 - e. The nature and extent of the insurance company's reinsurance program.
 - f. The quality, diversification, and liquidity of the insurance company's investment portfolio.
 - g. The recent past and projected future trend in the size of the insurance company's investment portfolio.
 - h. The surplus as regards policyholders maintained by other comparable insurance companies.

- i. The adequacy of the insurance company's reserves.
- j. The quality and liquidity of investments in ~~subsidiaries made pursuant to section 26.1-10-02~~ affiliates. The commissioner may treat the investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants.
- k. The quality of the company's earnings and the extent to which the reported earnings include extraordinary items.

SECTION 6. AMENDMENT. Section 26.1-24-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-24-10. Insurer's audit to determine premium - Time limitation. An insurer providing commercial insurance may conduct an audit to determine the premium due or to be refunded only within one hundred eighty days after the expiration date of the policy unless the insured agrees in writing to extend that period of time. ~~During the period allowed to conduct the audit, the insurer may not estimate the amount of premium to be refunded to or paid by the insured.~~

SECTION 7. AMENDMENT. Section 26.1-31.2-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-31.2-01. Credit allowed a domestic ceding insurer. Credit for reinsurance must be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of either subsection 1, 2, 3, 4, or 5. Credit will be allowed under subsection 1, 2, or 3 only with respect to cessions of a kind or class of business that the assuming insurer is licensed or otherwise allowed to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. If meeting the requirements of subsection 3 or 4, the requirements of subsection 6 must also be met.

1. Credit must be allowed when the reinsurance is ceded to an assuming insurer or nonprofit health service corporation which is licensed to transact insurance or reinsurance in this state.
2. Credit must be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in this state. An accredited reinsurer is one which:
 - a. Files with the commissioner evidence of its submission to this state's jurisdiction;
 - b. Submits to this state's authority to examine its books and records;
 - c. Is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state; and
 - d. Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of

domicile and a copy of its most recent audited financial statement; and either

- (1) Maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars and whose accreditation has not been denied by the commissioner within ninety days of its submission; or
- (2) Maintains a surplus as regards policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the commissioner.

No credit may be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing.

3. Credit must be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in, or in the case of a United States branch of an alien assuming insurer, is entered through, a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:
 - a. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and
 - b. Submits to the authority of this state to examine its books and records.

Provided, however, that the requirement of subdivision a of subsection 3 does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

4. a. Credit must be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution, as defined in subsection 2 of section 26.1-31.2-03, for the payment of valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the national association of insurance commissioners annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust must consist of a trustee account representing the assuming insurer's liabilities attributable to ~~business written in the~~ reinsurance ceded by United States ceding insurers and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars. In the case of a group, including incorporated and individual unincorporated underwriters, the trust must consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which one hundred million dollars must be held jointly for the benefit of United States ceding insurers of any member of the group for all years of account; the

incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and are subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; ~~and~~. Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall ~~make available~~ provide to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator ~~and its~~ or if a certification is unavailable, financial statements prepared by each underwriter's independent public accountants.

- b. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subdivision a, and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation and submits to this state's authority to examine its books and records and bears the expense of the examination, and which has aggregate policyholders' surplus of ten billion dollars; the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group plus the group shall maintain a joint trustee surplus of which one hundred million dollars must be held jointly and exclusively for the benefit of United States ceding insurers of any member of the group as additional security for any such liabilities; ~~and~~. Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and financial statements of each underwriter member prepared by its independent public accountant.
- c. The trust and any amendments to the trust must be established in a form approved by the commissioner of insurance the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust. The form of the trust and any trust amendments also must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument must provide that contested claims must be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described herein must remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, has outstanding obligations due under the reinsurance agreements subject to the trust.
- d. No later than February twenty-eighth of each year the trustees of the trust shall report to the commissioner in writing setting forth the

balance of the trust and listing the trust's investments at the preceding yearend and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the next following December thirty-first.

5. Credit must be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subsection 1, 2, 3, or 4 but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.
6. If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections 3 and 4 may not be allowed unless the assuming insurer agrees in the reinsurance agreements:
 - a. In the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or of any appellate court in the event of an appeal; and
 - b. To designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

SECTION 8. AMENDMENT. Section 26.1-31.2-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-31.2-02. Reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer. A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 26.1-31.2-01 must be allowed in an amount not exceeding the liabilities carried by the ceding insurer and such reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in subsection 2 of section 26.1-31.2-03. This security may be in the form of:

1. Cash.
2. Securities listed by the securities valuation office of the national association of insurance commissioners and qualifying as admitted assets.

3. Clean, irrevocable, ~~and~~ unconditional, and evergreen letters of credit issued or confirmed by a qualified United States institution, as defined in subsection 1 of section 26.1-31.2-03, effective no later than December thirty-first in respect of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs.
4. ~~Any other form of security acceptable to the commissioner.~~

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 265

HOUSE BILL NO. 1137

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

HEALTH INSURANCE BENEFITS AND PLANS

AN ACT to amend and reenact sections 26.1-08-06 and 26.1-08-06.1 of the North Dakota Century Code, relating to minimum benefits and medicare supplement plans of a qualified comprehensive health plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-08-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-08-06. Minimum benefits of a qualified comprehensive plan.

1. A plan of health coverage is a qualified comprehensive plan if it otherwise meets the requirements established by ~~chapter~~ 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 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.
- c. Covered expenses must include, at the option of the eligible person, the usual and customary charges for professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.
- d. Covered expenses for the services or articles specified in this subsection do not include:
- (1) Any charge for any care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable without regard to fault under coverage statutorily required to be contained in any motor vehicle or other liability insurance policy or equivalent self-insurance, or for which benefits are payable under another 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 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 1.

SECTION 2. 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 supplement plan. A qualified medicare supplement plan ~~is a~~ includes medicare supplement ~~plan~~ plans A and F. ~~This plan is~~ These plans are available to individuals who are eligible for medicare by reason of age or disability.

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 266

SENATE BILL NO. 2326

(Senators Lee, Flakoll)
(Representatives Devlin, Price)

HEALTH INSURANCE TERMINATION

AN ACT to amend and reenact section 26.1-08-13 of the North Dakota Century Code, relating to termination of comprehensive health association health coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-08-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-08-13. Termination of coverage. Coverage ~~pursuant to~~ 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 lifetime maximum benefit amount has been reached under subdivision a of subsection 1 of section 26.1-08-06.
4. If the covered person qualifies for health benefits under other plans or policies.
5. ~~When~~ If the covered person ceases to be a resident of individual physically resides outside this state for more than one hundred eighty-two days of each plan year, except for an association participant who is absent from the state for a verifiable medical reason as determined by the association board.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 267

HOUSE BILL NO. 1303

(Representatives Monson, Gulleason, Nicholas, Wald)
(Senators Kelsh, Traynor)

COUNTY MUTUAL INSURANCE COMPANIES

AN ACT to create and enact a new section to chapter 26.1-13 of the North Dakota Century Code, relating to county mutual insurance companies; and to amend and reenact sections 26.1-13-01 and 26.1-13-02 of the North Dakota Century Code, relating to county mutual insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-13-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-13-01. County mutual insurance company - Organization. A corporation for mutual insurance may be formed in accordance with this chapter by any number of persons, not less than fifty, residing in not more than ~~twenty~~ thirty counties in this state, who collectively own property of not less than one hundred thousand dollars in value which they desire to insure; or any number of persons, not less than twenty-five, residing in any one county in this state, who collectively own property of not less than twenty-five thousand dollars in value which they desire to insure. A county mutual insurance company organized under this chapter shall maintain a surplus of at least fifty thousand dollars.

SECTION 2. AMENDMENT. Section 26.1-13-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-13-02. Articles of incorporation - Territory of operation - Insurance applications required. Persons desiring to form a county mutual insurance company shall submit to the commissioner a description of the territory of operation and shall submit to the commissioner and to the attorney general the articles of incorporation of the proposed company. The territory of operation is subject to the review and approval of the commissioner. An existing county mutual insurance company that desires to expand its territory of operation shall submit a description of the current territory of operation and proposed territory of operation to the commissioner for review and approval. If merger of two or more county mutual insurance companies is proposed, the commissioner shall determine the territory of operation of the merged company. Upon a showing of good cause, the territory of operations of the merged company may exceed thirty counties. If the articles are found to comply with this chapter, the commissioner shall approve the articles and the articles must be filed in the office of the secretary of state and a certified copy must be filed with the commissioner. The articles must be signed by the number of persons required to incorporate the company and must be accompanied by sufficient evidence of the execution of bona fide applications for insurance to the number and in the amount stated in section 26.1-13-01. The articles of incorporation must set forth:

1. The name of the company.

2. The name of the city in or near which the business office of the company is to be located.
3. The intended duration of the company, which is perpetual.

SECTION 3. A new section to chapter 26.1-13 of the North Dakota Century Code is created and enacted as follows:

County mutual insurance company - Reports to commissioner. Each county mutual insurance company shall file an annual report with the commissioner no later than March first of each year which must be verified by at least two principal officers of the company and which must cover the preceding calendar year. 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 reports must be on forms prescribed by the commissioner. The commissioner may also require a company that operates in more than twenty counties to file audited financial statements as deemed necessary.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 268

HOUSE BILL NO. 1143

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

BOILER INSPECTION FEES

AN ACT to amend and reenact sections 26.1-22.1-07, 26.1-22.1-08, 26.1-22.1-09, and 26.1-22.1-10 of the North Dakota Century Code, relating to fees for inspection of boilers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-22.1-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-07. Inspection of boilers.

1. The chief boiler inspector shall inspect each boiler used or proposed to be used within this state. The inspection must be thorough as to the construction, installation, condition, and operation as provided by the rules adopted to implement this chapter. An exempt boiler may be inspected by the chief boiler inspector when the owner, the owner's agent, or the user of the boiler makes written request for inspection to the commissioner.
2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water where the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined that the owner or user has complied with the prescribed recordkeeping requirements, must be inspected at least once every thirty-six months internally while not under pressure, and at least once every twelve months externally while under pressure. If a hydrostatic test is necessary to determine the safety of a boiler, the test must be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity desiring to qualify for thirty-six month internal inspection intervals shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason or reasons therefor, and the results of the chemical and physical analysis of the boiler water, whether from laboratory analysis of samples taken at regular intervals of not more than forty-eight hours or from continuous on-line analysers, that will adequately show the condition of the water and any other elements or characteristics of the water capable of producing corrosion or other deterioration of the boiler or its parts.

3. In the event an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

SECTION 2. AMENDMENT. Section 26.1-22.1-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-08. Special inspector.

1. Upon written request of the employer, the commissioner may appoint as a special inspector an inspector in the employ of any insurance company authorized to insure boilers in this state against loss from explosion or any self-insured company that has employees for the purpose of inspecting its own boilers in this state. No person may be appointed as a special inspector unless that person has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.
2. Every inspection made by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the commissioner in the time, manner, and form as prescribed by the commissioner.
3. If a complete report is not filed with the commissioner within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless extensions of time are granted by the chief boiler inspector. For that inspection, the insurance company or self-insured company shall pay all appropriate inspection fees in accordance with section 26.1-22.1-09 for a special inspection.
4. The chief boiler inspector may inspect any boiler to which a special inspection applies.
5. The commissioner may, for cause, suspend or revoke the appointment of any special inspector.

SECTION 3. AMENDMENT. Section 26.1-22.1-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-09. Inspection and certificate fees. Upon completion of inspection, the owner or user of a boiler ~~inspected by the chief boiler inspector~~ shall pay to the commissioner fees or a combination of inspection and certificate fees which must be determined by the commissioner. Inspection fees must be determined by the commissioner. Certificate fees are determined by section 26.1-22.1-10. The commissioner must determine and may annually adjust a fee scale for the internal inspections of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

Not more than one hundred fifty dollars may be charged or collected for any one inspection of a boiler except for special inspections made upon request. Not more than seventy-five dollars may be charged or collected for any one inspection of a steam traction engine except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed ~~two three hundred eighty-five~~ fifty dollars

per day or ~~one~~ two hundred ~~fifty~~ dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the commissioner. The annual fee for the issuance of a reciprocal commission card for a special inspector is ~~twenty~~ twenty-five dollars and the annual fee for the issuance of a welder-qualified card is ten dollars.

SECTION 4. AMENDMENT. Section 26.1-22.1-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-10. Certificate of inspection - Certificate to be posted. The commissioner shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The commissioner shall charge a fee of ~~fifteen~~ twenty dollars for each certificate of inspection issued as the result of inspections authorized under ~~section~~ sections 26.1-22.1-07 and 26.1-22.1-08. The fees are the liability of the ~~insurance company owner or self-insured company user~~ insurance company owner or self-insured company user and must be paid in accordance with rules adopted by the commissioner. No certificate may be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. No certificate is valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 26.1-22.1-07, and no more than twelve months for other power boilers, twenty-four months for steam traction engines, and thirty-six months for low pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

Approved March 12, 2001
Filed March 12, 2001

CHAPTER 269

SENATE BILL NO. 2302

(Senators Epegard, Kilzer)

RETROACTIVE UTILIZATION REVIEWS

AN ACT to amend and reenact section 26.1-26.4-02, subsection 1 of section 26.1-26.4-04, subdivision c of subsection 4 of section 26.1-26.4-04, and subsection 10 of section 26.1-26.4-04 of the North Dakota Century Code, relating to retroactive reviews as part of utilization review.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-26.4-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-26.4-02. Definitions. For purposes of this chapter, unless the context requires otherwise:

1. "Commissioner" means the insurance commissioner.
2. "Emergency medical condition" means a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson acting reasonably and possessing an average knowledge of health and medicine to believe that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily function, serious dysfunction of any bodily organ or part, or would place the person's health, or with respect to a pregnant woman the health of the woman or her unborn child, in serious jeopardy.
3. "Emergency services" means health care services, supplies, or treatments furnished or required to screen, evaluate, and treat an emergency medical condition.
4. "Enrollee" means an individual who has contracted for or who participates in coverage under an insurance policy, a health maintenance organization contract, a health service corporation contract, an employee welfare benefit plan, a hospital or medical services plan, or any other benefit program providing payment, reimbursement, or indemnification for health care costs for the individual or the individual's eligible dependents.
5. "Health care insurer" includes an insurance company as defined in section 26.1-02-01, a health service corporation as defined in section 26.1-17-01, a health maintenance organization as defined in section 26.1-18.1-01, and a fraternal benefit society as defined in section 26.1-15.1-02.
6. "Provider of record" means the physician or other licensed practitioner identified to the utilization review agent as having primary responsibility for the care, treatment, and services rendered to an individual.

7. "Retrospective" means utilization review of medical necessity which is conducted after services have been provided to a patient, but does not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.
8. "Utilization review" means a system for prospective, retrospective, and concurrent review of the necessity and appropriateness in the allocation of health care resources and services that are subject to state insurance regulation and which are given or proposed to be given to an individual within this state. Utilization review does not include elective requests for clarification of coverage.
- ~~8.~~ 9. "Utilization review agent" means any person or entity performing utilization review, except:
 - a. An agency of the federal government; or
 - b. An agent acting on behalf of the federal government or the department of human services, but only to the extent that the agent is providing services to the federal government or the department of human services.

SECTION 2. AMENDMENT. Subsection 1 of section 26.1-26.4-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 3. AMENDMENT. Subdivision c of subsection 4 of section 26.1-26.4-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. Utilization review agents shall provide for an expedited appeals process for emergency or life-threatening situations. Utilization review agents shall complete the adjudication of expedited appeals within forty-eight hours of the date the appeal is filed and the receipt of all information necessary to complete the appeal. The expedited appeals process is not applicable to retrospective reviews.

SECTION 4. AMENDMENT. Subsection 10 of section 26.1-26.4-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 270

HOUSE BILL NO. 1198

(Representative Keiser)
(Senator Krebsbach)

INSURANCE POLICY TRANSFER

AN ACT to create and enact a new section to chapter 26.1-30.1, a new section to chapter 26.1-39, and a new section to chapter 26.1-40 of the North Dakota Century Code, relating to transfer of policies within an insurance holding company system; and to amend and reenact subsection 4 of section 26.1-39-11 and subsection 5 of section 26.1-40-01 of the North Dakota Century Code, relating to transfer of policies within an insurance holding company system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-30.1 of the North Dakota Century Code is created and enacted as follows:

Policy transfer.

1. A policy transferred to an insurer within the same insurance holding company system is not subject to sections 26.1-30.1-02, 26.1-30.1-03, 26.1-30.1-03.1, and 26.1-30.1-06.
2. The transferring insurer shall give notice to the policyholder of the policy transfer.

SECTION 2. A new section to chapter 26.1-39 of the North Dakota Century Code is created and enacted as follows:

Notice of transfer. The insurer transferring a policy to another insurer within the same insurance holding company system shall give notice to the policyholder of the transfer.

¹⁴³ **SECTION 3. AMENDMENT.** Subsection 4 of section 26.1-39-11 of the North Dakota Century Code is amended and reenacted as follows:

4. "Termination" means either a cancellation or nonrenewal of property insurance coverage in whole or in part. A cancellation occurs during the policy term. A nonrenewal occurs at the end of the policy term as set forth in subsection 3. For purposes of sections 26.1-39-10 through 26.1-39-21, the transfer of a ~~policyholder~~ policy between companies within the same insurance ~~group~~ holding company system is ~~considered~~ not a termination. Requiring a reasonable deductible, reasonable changes in the amount of insurance, or reasonable

¹⁴³ Section 26.1-39-11 was also amended by section 109 of Senate Bill No. 2144, chapter 262.

reductions in policy limits or coverage is not considered a termination if the requirements are directly related to the hazard involved and are made on the renewal date for the policy.

¹⁴⁴ **SECTION 4. AMENDMENT.** Subsection 5 of section 26.1-40-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Termination" means either a cancellation or nonrenewal of automobile insurance coverage in whole or in part. A cancellation occurs during the policy term. A nonrenewal occurs at the end of the policy term. An insurer's substitution of insurance upon renewal which results in substantially equivalent coverage is not a termination. The transfer of a policy between companies within the same insurance holding company system is not a termination.

SECTION 5. A new section to chapter 26.1-40 of the North Dakota Century Code is created and enacted as follows:

Notice to transfer. The insurer transferring a policy to an insurer within the same insurance holding company system shall give notice to the policyholder of the transfer.

Approved March 21, 2001

Filed March 21, 2001

¹⁴⁴ Section 26.1-40-01 was also amended by section 117 of Senate Bill No. 2144, chapter 262.

CHAPTER 271

SENATE BILL NO. 2150

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

VIATICAL SETTLEMENT CONTRACTS

AN ACT to create and enact chapter 26.1-33.2 of the North Dakota Century Code, relating to viatical settlement contracts; to amend and reenact subdivision a of subsection 16 of section 10-04-02 of the North Dakota Century Code, relating to viatical settlement contracts; to repeal chapter 26.1-33.1 of the North Dakota Century Code, relating to viatical settlement contracts; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 16 of section 10-04-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to the viatical settlement provider pursuant to chapter ~~26.1-33.1~~ 26.1-33.2;

SECTION 2. Chapter 26.1-33.2 of the North Dakota Century Code is created and enacted as follows:

26.1-33.2-01. Definitions.

1. "Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, or the internet, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical settlement contract.
2. "Business of viatical settlements" means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner, of viatical settlement contracts or purchase agreements.
3. "Chronically ill" means:
 - a. Being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence;
 - b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

- c. Having a level of disability similar to that described in subdivision a as determined by the secretary of health and human services.
- 4. a. "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but:
 - (1) Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and
 - (2) Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.
- b. "Financing entity" does not include a nonaccredited investor or viatical settlement purchaser.
- 5. "Fraudulent viatical settlement act" includes:
 - a. Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in, acts including:
 - (1) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:
 - (a) An application for the issuance of a viatical settlement contract or insurance policy;
 - (b) The underwriting of a viatical settlement contract or insurance policy;
 - (c) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;
 - (d) Premiums paid on an insurance policy;
 - (e) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;
 - (f) The reinstatement or conversion of an insurance policy;
 - (g) In the solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy;

state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

8. "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.
9. "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets to a financing entity or viatical settlement provider.
10. "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less.
11. "Viatical settlement broker" means a person who on behalf of a viator and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.
12. "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.
13. "Viatical settlement provider" means a person, other than a viator, who enters into or effectuates a viatical settlement contract. Viatical settlement provider does not include:

- a. A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
 - b. The issuer of a life insurance policy providing accelerated benefits;
 - c. An authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
 - d. A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
 - e. A financing entity;
 - f. A special purpose entity;
 - g. A related provider trust;
 - h. A viatical settlement purchaser; or
 - i. An accredited investor or qualified institutional buyer as defined respectively in regulation D, rule 501 or rule 144A of the Federal Securities Act of 1933, as amended, and who purchases a viaticated policy from a viatical settlement provider.
14. "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.
15. "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this chapter, a viator is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed.

26.1-33.2-02. License requirements - Penalty.

1. A person may not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator. A person may not operate as a viatical settlement broker without first obtaining an insurance producer license from the commissioner.
2. Application for a viatical settlement provider must be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application must be accompanied by a fee of two hundred fifty dollars.
3. Application for a viatical settlement broker license must be made to the commissioner by the applicant on a form prescribed by the commissioner and the application must be accompanied by a fee of two hundred fifty dollars.

4. Licenses must be renewed from year to year on the anniversary date upon payment of the annual renewal fees of one hundred fifty dollars. Failure to pay the fees by the renewal date results in expiration of the license.
5. The applicant shall provide information on forms required by the commissioner. An applicant shall fully disclose the identity of all stockholders, partners, officers, members, and employees. The commissioner may refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner, or member thereof who may materially influence the applicant's conduct meets the standards of this chapter.
6. A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers or viatical settlement brokers as applicable, under the license, and all those persons must be named in the application and any supplements to the application.
7. Upon the filing of an application and the payment of the license fee, the commissioner shall issue a license if the commissioner finds that the applicant:
 - a. If a viatical settlement provider, has provided a detailed plan of operation;
 - b. Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;
 - c. Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for;
 - d. If a legal entity, provides a certificate of good standing from the state of its domicile; and
 - e. If a viatical settlement provider or viatical settlement broker has provided an antifraud plan that meets the requirements of subsection 6 of section 26.1-33.2-10.
8. The commissioner may not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner, the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.
9. A person may not act or hold oneself out to be a viatical settlement provider unless licensed under this chapter. Any person willfully violating this section is guilty of a class C felony.

26.1-33.2-03. License revocation and denial.

1. The commissioner may refuse to issue, suspend, revoke, or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that:

- a. There was any material misrepresentation in the application for the license;
 - b. The licensee or any officer, partner, member, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent;
 - c. The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;
 - d. The licensee has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;
 - e. The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this chapter;
 - f. The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;
 - g. The licensee no longer meets the requirements for initial licensure;
 - h. The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, financing entity, special purpose entity, or related provider trust;
 - i. The licensee knowingly has provided materially untrue information to a life insurance company that issued a policy of life insurance that is the subject of a viatical settlement contract; or
 - j. The licensee has violated any provision of this chapter.
2. If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a viatical settlement provider or viatical settlement broker, the commissioner shall conduct a hearing in accordance with chapter 28-32.

26.1-33.2-04. Approval of viatical settlement contracts and disclosure statements. A person may not use a viatical settlement contract or provide to a viator a disclosure statement form in this state unless filed and approved by the commissioner. Any viatical settlement contract form filed with the commissioner must be deemed approved if it has not been disapproved within sixty days of filing. The commissioner may disapprove a viatical settlement contract form or disclosure statement form if the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. All viatical settlement contracts and applications for viatical settlements issued or delivered in this state must contain the following statement:

Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.

The lack of a statement as required in this section does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

26.1-33.2-05. Reporting requirements and confidentiality.

1. Each viatical settlement provider shall file with the commissioner on or before March first of each year an annual statement containing information regarding business transacted in this state for the previous calendar year:
 - a. For each policy viaticated:
 - (1) The date the viatical settlement was entered.
 - (2) The life expectancy of the viator at time of contract.
 - (3) The face amount of the policy.
 - (4) The amount paid by the viatical settlement provider to viaticate the policy and the percentage that amount represents of the face amount.
 - (5) If the viator has died:
 - (a) The date of death.
 - (b) The total insurance premiums paid by the viatical settlement provider to maintain the policy in force.
 - b. A breakdown, by disease category, of applications received, accepted, and rejected.
 - c. A breakdown of policies viaticated by issuer and policy type.
 - d. The number of secondary market versus primary transactions.
 - e. The total number of policies viaticated.
 - f. The amount of outside borrowings.
2. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency, or company, or any other person with actual knowledge of an insured's identity, may not disclose the insured's identity or the insured's financial or medical information to any other person unless the disclosure:
 - a. Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;
 - b. Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency;
 - c. Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider; or

- d. Is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider or a viatical settlement purchaser and the insured has provided prior consent to the disclosure.

26.1-33.2-06. Examination or investigations.

1. When the commissioner deems it reasonably necessary to protect the interest of the public, the commissioner may examine any licensee or applicant for a license. In lieu of an examination under this chapter of any foreign or alien licensee licensed in this state, the commissioner may accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state. The expenses incurred in conducting any examination must be paid by the licensee or applicant. The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.
2.
 - a. Names and individual identification data for all viators are confidential information and may not be disclosed by the commissioner, unless required by law.
 - b. Records of all transactions of viatical settlement contracts must be maintained by the licensee and must be made available to the commissioner for inspection during reasonable business hours.

26.1-33.2-07. Disclosure.

1. With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker must provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures must be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker and must provide the following information:
 - a. Possible alternatives to viatical settlement contracts including any accelerated death benefits or policy loans offered under the viator's life insurance policy.
 - b. Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.
 - c. Proceeds of the viatical settlement could be subject to the claims of creditors.
 - d. Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.
 - e. The viator has the right to rescind a viatical settlement contract within thirty days from the date of the contract or fifteen calendar days after receipt of the viatical settlement proceeds by the viator,

- whichever is earlier, as provided in subsection 3 of section 26.1-33.2-08. If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan interest to the viatical settlement provider or purchaser.
- f. Funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer or group administrator's acknowledgement that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.
 - g. Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and that assistance should be sought from a financial adviser.
 - h. Disclosure to a viator must include distribution of a brochure describing the process of viatical settlements.
 - i. The disclosure document must contain the following language: "All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity, medical, and financial information or the identity of family members, a spouse, or significant other, may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase."
 - j. The insured may be contacted by either the viatical settlement provider or broker or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.
2. A viatical settlement provider must provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures must be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker and provide the following information:
- a. State the affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated.
 - b. The document must include the name, address, and telephone number of the viatical settlement provider.
 - c. A viatical settlement broker shall disclose to a prospective viator the amount and method of calculating the broker's compensation

and all offers received including the name of the settlement provider making the offer.

- d. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator must be informed of the possible loss of coverage on the other lives under the policy and must be advised to consult with the viator's insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.
 - e. State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the viatical settlement provider's interest in those benefits.
 - f. State the name, business address, and telephone number of the independent third party escrow agent and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.
3. If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within twenty days after the change.

26.1-33.2-08. General rules.

1. a. A viatical settlement provider entering into a viatical settlement contract must first obtain:
 - (1) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract;
 - (2) A witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator has entered into the viatical settlement contract freely and voluntarily, and, if applicable for the purposes of determining payments for persons who are terminally or chronically ill, acknowledges that the insured is terminally ill or is chronically ill and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued; and
 - (3) A document in which the insured consents to the release of the insured's medical records to a viatical settlement provider, viatical settlement broker, and the insurance

company that issued the life insurance policy covering the life of the insured.

- b. Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy or within twenty days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider must give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice must be accompanied by the documents required by subdivision c in their entirety.
- c. The viatical provider must deliver a copy of the medical release required under paragraph 3 of subdivision a and a copy of the viator's application for the viatical settlement contract to the insurer that issued the life insurance policy that is the subject of the viatical transaction along with the notice required under subdivision b.
2. All medical information solicited or obtained by any licensee is subject to the applicable provision of state law relating to confidentiality of medical information.
3. All viatical settlement contracts entered into in this state must provide the viator with an unconditional right to rescind the contract for at least thirty calendar days from the date of the contract or fifteen days from the receipt of the viatical settlement proceeds, whichever is less. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider.
4. The viatical settlement provider must instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the escrow agent shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the federal deposit insurance corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider. Upon the licensed provider's receipt of the acknowledgement of the transfer of ownership, assignment, or designation of beneficiary from the insurance company, the licensed provider shall instruct the escrow agent to pay the settlement proceeds to the viator. Payment must be made within three business days of the date the provider received the acknowledge forms from the insurance company.
5. Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed pursuant to subdivision f of subsection 1 of section 26.1-33.2-07 renders the viatical settlement

contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

6. Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred must only be made by the viatical settlement provider or broker licensed in this state or its authorized representatives and is limited to once every three months for insureds with a life expectancy of more than one year and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.
7. Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements are the responsibility of the viatical settlement licensee, as well as the individual who created or presented the advertisement. Advertisements must be truthful and not misleading in fact or by implication.

26.1-33.2-09. Prohibited practices. It is a violation of this chapter for any person to enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

1. The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, if the coverage has been continuous and under the same group sponsorship.
2. The owner of the policy is a charitable organization exempt from taxation under 26 U.S.C. 501(c)(3).
3. The owner of the policy is not a natural person, such as a corporation, limited liability company, or partnership.
4. a. The viator or owner submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:
 - (1) The owner or insured is diagnosed with an illness or condition that is either life threatening or that requires a course of treatment for a period of at least two years or long-term care or home health care, or both;
 - (2) The owner's or insured's spouse dies;
 - (3) The owner or insured divorces that person's spouse;

- (4) The owner or insured retires from full-time employment;
 - (5) The owner or insured becomes physically or mentally disabled and a physician determines that the disability prevents the owner or insured from maintaining full-time employment;
 - (6) The owner of the policy was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;
 - (7) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner or insured, adjudicating the owner or insured bankrupt or insolvent, or approving a petition seeking reorganization of the owner or insured or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's or insured's assets; or
 - (8) The owner of the policy experiences a significant decrease in income that is unexpected by the owner and that impairs the owner's reasonable ability to pay the policy premium.
- b. The independent evidence must be submitted to the insurer when the viatical settlement provider submits a request to the insurer to effect transfer of policy or certificate to the viatical settlement provider. The insurer shall respond to the request in a timely manner. Nothing in this section prohibits an insurer from exercising its right to contest the validity of any policy on the grounds of fraud.
5. If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification described in subsection 4 when the viatical settlement provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy must be deemed to conclusively establish that the viatical settlement contract is valid and enforceable and the insurer shall timely respond to the request.

26.1-33.2-10. Fraud prevention and control.

1. A person may not commit a fraudulent viatical settlement act. 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. A person in the business of viatical settlements may not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.
2. A person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed must notify the commissioner.
3. Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been

committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

4. Civil liability may not be imposed on and a cause of action does not arise from a person acting without actual malice and furnishing information concerning suspected, anticipated, or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts if the information is provided to or received from:

 - a. The commissioner or the commissioner's employees, agents, or representatives;
 - b. Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;
 - c. A person involved in the prevention and detection of fraudulent viatical settlement act or that person's agents, employees, or representatives;
 - d. The national association of insurance commissioners, national association of securities dealers, North American securities administrators association, or their employees, agents, or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud; or
 - e. The life insurer that issued the life insurance policy covering the life of the insured.
5. The documents and evidence provided pursuant to subsection 4 or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts are confidential and are not subject to discovery or subpoena in a civil or criminal action.
6. Viatical settlement providers and viatical settlement brokers shall submit to the commissioner an antifraud plan that must reasonably detect, prosecute, and prevent fraudulent viatical settlement acts. Antifraud plans must include at least:

 - a. Fraud investigators, who may be viatical settlement provider employees or independent contractors.
 - b. A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications.
 - c. A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner.
 - d. A description of the plan for antifraud education and training of underwriters and other personnel.
 - e. A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and

investigating unresolved material inconsistencies between medical records and insurance applications.

- f. Antifraud plans submitted to the commissioner are confidential and are not subject to discovery or subpoena in a civil or criminal action.

26.1-33.2-11. Injunctions - Civil remedies - Cease and desist. In addition to the penalties and other enforcement provisions of this title, any person who violates this chapter is subject to civil penalties of up to fifty thousand dollars per violation. Imposition of civil penalties must be pursuant to an order of the commissioner issued under chapter 28-32. The commissioner's order may require a person found to be in violation of this chapter to make restitution to persons aggrieved by violations of this chapter.

26.1-33.2-12. Unfair trade practices. A violation of this chapter is an unfair trade practice under chapter 26.1-04 subject to the penalties contained in that chapter.

26.1-33.2-13. Authority to adopt rules. The commissioner may adopt rules implementing this chapter.

SECTION 3. REPEAL. Chapter 26.1-33.1 of the North Dakota Century Code is repealed.

Approved April 17, 2001
Filed April 17, 2001

CHAPTER 272**SENATE BILL NO. 2246**

(Senators Lee, Watne)
(Representatives Carlson, Rennerfeldt)

LIFE INSURANCE TRUSTEE DUTIES

AN ACT to create and enact a new section to chapter 26.1-33 of the North Dakota Century Code, relating to the duties of a trustee of a life insurance trust.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-33 of the North Dakota Century Code is created and enacted as follows:

Life insurance policy ownership or retention by trust - Duties of trustee.

Notwithstanding any other provision of law, the duties of a trustee regarding the acquisition, retention, or ownership of a life insurance policy upon the life of any one or more of the grantor of the trust, the grantor's spouse, children, grandchildren, or parents include a duty of loyalty and fair dealing, but, except as provided below, do not include a duty to:

1. Determine whether any life insurance policy in the trust is or remains a proper investment;
2. Exercise a policy option, right, or privilege available under a life insurance policy; or
3. Diversify the investment.

A trustee is not liable to the beneficiaries under the trust instrument or to any other person for a loss that is claimed to result from the absence of these duties, except if a trustee acquires a replacement policy for the trust which replaces an existing policy owned by the trust or previously owned by the trust. The trustee's exoneration from duty provided in this section does not apply to the replacement policy and only applies to a policy transferred to a trust by the grantor or some other party other than the trustee or acquired by the trustee of a trust which before the acquisition of the policy had never owned any such life insurance policy.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 273

HOUSE BILL NO. 1144

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

BREAST RECONSTRUCTION SURGERY INSURANCE COVERAGE

AN ACT to create and enact section 26.1-36-09.11 of the North Dakota Century Code, relating to insurance coverage for breast reconstruction surgery; and to amend and reenact subsection 5 of section 26.1-36.3-05 and subsection 5 of section 26.1-36.4-05 of the North Dakota Century Code, relating to renewability of health insurance coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 26.1-36-09.11 of the North Dakota Century Code is created and enacted as follows:

26.1-36-09.11. Breast reconstruction surgery. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, or franchise basis unless the policy, contract, or evidence of insurance provides the benefit provisions of the federal Women's Health and Cancer Rights Act of 1998 [Pub. L. 105-277; 112 Stat. 2681-337; 42 U.S.C. 300gg-6]. This section does not apply to individual or group supplemental, specified disease, long-term care, or other limited benefit policies.

SECTION 2. AMENDMENT. Subsection 5 of section 26.1-36.3-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. At the time of coverage renewal, a health insurance carrier may modify the health insurance coverage for a product offered to a group health plan, if for coverage that is available in such market other than only through one or more bona fide associations, the modification is reasonable, consistent with state law and effective on a uniform basis among group health plans with that product. If coverage is modified, the carrier shall:
 - a. Provide advance notice of its decision under this subsection to the commissioner at least three working days prior to mailing the notice to the affected small employers and participants and beneficiaries.
 - b. Provide notice of the decision to modify health coverage to all affected small employers, participants, and beneficiaries and the commissioner sixty days prior to the modification of health coverage by the carrier.

SECTION 3. AMENDMENT. Subsection 5 of section 26.1-36.4-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. At the time of coverage renewal, an insurer may modify the health insurance coverage for a product offered to a group or individual, if the modification is reasonable, consistent with state law and effective on a uniform basis. If coverage is modified, the carrier shall:
 - a. Provide advance notice of its decision under this subsection to the commissioner at least three working days prior to mailing the notice to the affected employers and participants and beneficiaries.
 - b. Provide notice of the decision to modify health coverage to all affected employers, participants, and beneficiaries and the commissioner sixty days prior to the modification of health coverage by the carrier.

Approved March 12, 2001
Filed March 12, 2001

CHAPTER 274

HOUSE BILL NO. 1226

(Representatives Porter, Devlin, Keiser, Svedjan)
(Senators Cook, Stenehjem)

INDIVIDUAL AND SMALL EMPLOYER HEALTH INSURANCE

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to providing basic health insurance coverage for individuals and small employers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Basic health insurance coverage - Exceptions to required coverage.

1. An insurance company, a nonprofit health service corporation, or a health maintenance organization may deliver, issue, execute, and renew a basic health insurance policy, health service contract, or evidence of coverage on an individual basis or an employer group, blanket, franchise, or association basis for employers with fewer than fifty employees.
2. The basic health insurance coverage policy, contract, or evidence of coverage under this section is not subject to sections 26.1-36-06.1, 26.1-36-08, 26.1-36-09.1, 26.1-36-09.3, 26.1-36-09.6, 26.1-36-09.7, 26.1-36-09.9, 26.1-36-09.10, 26.1-36-12.1, and 43-13-31. However, the insurance company, nonprofit health service corporation, or health maintenance organization shall make the coverage required under these sections available at the option of the individual or employer and may charge an additional premium for each coverage provided.
3. Any law that becomes effective after January 1, 2001, which provides for an accident and health insurance coverage mandate does not apply to a basic health insurance policy issued under this section unless the law specifically identifies application to a basic health insurance coverage policy.

Approved April 13, 2001

Filed April 13, 2001

CHAPTER 275

HOUSE BILL NO. 1365

(Representatives Nottestad, Rennerfeldt, Winrich)
(Senators Lyson, Mutch)

UNIFORM PRESCRIPTION DRUG CARDS

AN ACT to create and enact a new section to chapter 26.1-36 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to issuance of uniform prescription drug cards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Uniform prescription drug information card.

1. An insurance company, a nonprofit health service corporation, or a health maintenance organization that provides coverage for prescription drugs and that issues a card or other technology for prescription drug claims processing and an administrator of such coverage, including a third-party administrator for a self-insurance plan, a pharmacy benefits manager, and a state-administered plan may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the insured is also issued a uniform card or other technology containing uniform prescription drug information as provided under this section.
2. The uniform prescription drug information card or other technology must be in the format approved by the national council for prescription drug programs and must include all of the fields the issuer determines necessary to submit a claim and all the fields necessary to conform to the most recent pharmacy information card or technology implementation guide produced by the national council for prescription drug programs, or must include all the fields necessary to conform to a national format acceptable to the commissioner. All information the issuer determines necessary for claims submission of prescription drug benefits, exclusive of information provided on the prescription as required by law or rule, must be included on the card or other technology in a clear, readable, and understandable manner. All information on the card or other technology which is required under this section and which is not specified by the national council for prescription drug programs must be formatted and arranged in a manner that corresponds in content and format acceptable to the commissioner. All information on the card must be formatted and arranged in a manner that corresponds in content and format to the current content and format required by the issuer to process the claim. If an issuer requires a conditional or situation field as defined by the national council for prescription drug programs, the field must conform to the pharmacy information card or technology implementation guide produced by the

national council for prescription drug programs or conform to the national format acceptable to the commissioner.

3. An issuer shall issue a new uniform prescription drug information card or other technology upon enrollment and reissue upon any change in the cardholder's coverage which impacts data in content or format as contained on the card or which affects the data content or format required to be on the card or other technology as required by this section. Newly issued cards or other technology must be updated with the latest coverage information and must conform to the national council for prescription drug programs standards and to the implementation guide or must conform to the format specified by the commissioner. However, the issuer may issue to the insured stickers or other methodologies to temporarily update cards as may be acceptable to the commissioner.
4. The card or other technology may be used for any health insurance coverage. This section does not require any person issuing the card or other technology to issue a separate card for prescription coverage, provided the card or other technology can accommodate the information necessary to process the claim as required by this section.

SECTION 2. A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Uniform prescription drug cards. The board shall provide for issuance of uniform prescription drug cards under a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 in the same manner as provided under section 1 of this Act.

Approved March 13, 2001
Filed March 13, 2001

CHAPTER 276**HOUSE BILL NO. 1277**

(Representatives Wald, Kasper, Tieman)

**EMPLOYEE HEALTH INSURANCE PREMIUM
PAYMENT**

AN ACT to create and enact a new section to chapter 26.1-36.4 of the North Dakota Century Code, relating to acceptable methods of employer payment of employee health insurance premiums.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36.4 of the North Dakota Century Code is created and enacted as follows:

Employer payment of employee premium. An insurer shall accept a personal or business check from an employer as a payment method for premium payment for an employee's individual accident and health insurance policy. This section does not apply to groups as defined under chapter 26.1-36.3.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 277

SENATE BILL NO. 2210

(Senators Tallackson, Mutch)
(Representatives Kasper, Wald)

HEALTH INSURANCE UTILIZATION REPORTS

AN ACT to create and enact a new section to chapter 26.1-36.4 of the North Dakota Century Code, relating to health insurance utilization reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36.4 of the North Dakota Century Code is created and enacted as follows:

Health insurance utilization reports.

1. Once each calendar year, any employer with fifty-one or more eligible employees or upon termination of health insurance coverage for any employer, the employer is entitled to a report from the insurer or administrator of that employer's employee health plan which includes a monthly accounting for the most recent twenty-four-month period of the total number of insured or covered employees, the total premiums paid, and the total benefits paid on behalf of the employer's health plan.
2. Insurers shall provide the report pursuant to subsection 1 to an employer within thirty days of receipt of a request for the information.
3. The information provided pursuant to subsection 1 may not identify specific employee claims or other confidential health care information.
4. Upon notification of termination of health insurance before the end of a benefit period, the terminated insurer, at the request of the employer and within thirty days of the request, shall supply the succeeding or new insurer a report of all deductibles and coinsurance payments for each employee covered by the employer's health insurance plan for the most recent benefit period.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 278

SENATE BILL NO. 2143

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

CREDIT INSURANCE

AN ACT to create and enact section 26.1-37-04.1 of the North Dakota Century Code, relating to credit insurance; to amend and reenact sections 26.1-37-01, 26.1-37-02, 26.1-37-03, 26.1-37-05, 26.1-37-06, 26.1-37-07, 26.1-37-08, 26.1-37-09, 26.1-37-13, and 26.1-37-14 of the North Dakota Century Code, relating to credit insurance; and to repeal sections 26.1-37-04, 26.1-37-10, 26.1-37-11, and 26.1-37-12 of the North Dakota Century Code, relating to credit insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-37-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-01. Scope and construction.

1. This chapter may be cited as the "Consumer Credit Insurance Model Act".
2. All life insurance and all accident and health consumer credit insurance issued or sold in connection with loans or other credit transactions are for personal, family, or household purposes is subject to the provisions of this chapter, except such insurance:
 - a. Insurance written in connection with a loan or other credit transaction of more than twenty years' duration, and except where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor. This chapter must be liberally construed that is:
 - (1) Secured by a first mortgage or deed of trust;
 - (2) Made to finance the purchase of real property or the construction of a dwelling thereon, or to refinance a prior credit transaction made for such a purpose;
 - b. Transactions involving extensions of credit primarily for business or commercial purposes;
 - c. Insurance on motor vehicles designed for highway use and on mobile homes;
 - d. Creditor-placed insurance;

- e. Insurance sold as an isolated transaction on the part of the insurer and not related to an agreement or a plan for insuring debtors of the creditor;
- f. Insurance for which no identifiable charge is made to the debtor; and
- g. Insurance on accounts receivable.

SECTION 2. AMENDMENT. Section 26.1-37-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-02. Definitions. For the purpose of this chapter:

1. "Closed-end credit" means a credit transaction that does not meet the definition of open-end credit.
2. "Collateral" means personal property that is pledged as security for the satisfaction of a debt.
3. "Consumer credit insurance" is a general term used in this chapter to refer to any or all of credit life insurance, credit accident and health insurance, credit unemployment insurance, credit property, or any other credit insurance.
4. "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.
5. "Credit agreement" means the written document that sets forth the terms of the credit transaction and includes the security agreement.
- 2- 6. "Credit life insurance" means insurance on ~~the life of~~ a debtor or debtors, pursuant to or in connection with a specific loan or other credit transaction, to provide for satisfaction of a debt, in whole or in part, upon the death of an insured debtor.
- 3- 7. "Creditor" means the lender of money or vendor or lessor of goods, services, or property, rights, or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of the lender, vendor, or lessor, and an affiliate, associate, or subsidiary of any of them or any director, officer, or employee of any of them, or any other person in any way associated with any of them.
8. "Creditor-placed insurance" means insurance that is purchased unilaterally by the creditor, who is the named insured, subsequent to the date of the credit transaction, providing coverage against loss, expense, or damage to the collateralized personal property as a result of fire, theft, collision, or other risks of loss that would either impair a creditor's interest or adversely affect the value of collateral covered by dual interest insurance. It is purchased according to the terms of the credit agreement as a result of the debtor's failure to provide required physical damage insurance, with the cost of the coverage being charged to the debtor. It is either single interest insurance or limited dual interest insurance.

9. "Credit property insurance" means any policy, endorsement, rider, binder, certificate, or other instrument or evidence of insurance covering perils to goods purchased through a credit transaction or used as collateral for a credit transaction and which concerns a creditor's interest in the purchased goods or pledged collateral either in whole or in part.
10. "Credit transaction" means any transaction by the terms of which the repayment of money loaned or loan commitment made, or payment for goods, services, or properties sold or leased, is to be made at a future date or dates.
11. "Credit unemployment insurance" means insurance on a debtor to provide indemnity for payments or debt becoming due on a specific loan or other credit transaction while the debtor is involuntarily unemployed as defined in the policy.
4. 12. "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.
5. ~~"Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.~~
13. "Dual interest insurance" means credit property insurance covering the seller's or creditor's interest and at least partially the borrower's interest in the goods purchased through the credit transaction or pledged as collateral for the credit transaction.
14. "Finance charge" means any charge payable directly or indirectly as an incident to or as a condition of the extension of credit, including interest; time price differentials; amount payable under a discount system of additional charges; service, transaction, or carrying charges; loan fees; points or similar charges; appraisal fees; or charges incurred for investigating the credit worthiness of the consumer. The terms do not include charges as a result of default, taxes, license fees, delinquency charges, or filing fees.
15. "Gross debt" means the sum of the remaining payments owed to the creditor by the debtor.
16. "Identifiable charge" means a charge for a type of consumer credit insurance that is made to debtors having such insurance and not made to debtors not having such insurance, and includes a charge for insurance that is disclosed in the credit or other instrument furnished to the debtor which sets out the financial elements of the credit transaction and any difference in the finance, interest, service, or other similar charge made to debtors who are in like circumstances except for the insured or noninsured status of the debtor or of the property used as security for the credit transaction.
17. "Net debt" means the amount necessary to liquidate the remaining debt in a single lump sum payment, excluding all unearned interest and other unearned finance charges.
18. "Open-end credit" means credit extended by a creditor under an agreement in which:

- a. The creditor reasonably contemplates repeated transactions;
- b. The creditor imposes a finance charge from time to time on an outstanding unpaid balance; and
- c. The amount of credit that may be extended to the debtor during the term of the agreement, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

SECTION 3. AMENDMENT. Section 26.1-37-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-03. Issuance of policies and certificates. All credit life insurance and credit accident and health insurance policies subject to this chapter may be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business therein, and may be issued only through holders of licenses or authorizations issued by the commissioner.

SECTION 4. Section 26.1-37-04.1 of the North Dakota Century Code is created and enacted as follows:

26.1-37-04.1. Types of consumer credit insurance. The types of consumer credit insurance defined in section 26.1-37-02 may each be written separately or in combination with other types of consumer credit insurance on an individual policy or group policy basis. The commissioner may by rule prohibit or limit any combination.

SECTION 5. AMENDMENT. Section 26.1-37-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-05. Amount of consumer credit life insurance and credit accident and health insurance.

1.
 - a. Except as otherwise provided in this subsection, the initial amount of credit life insurance may not exceed the total amount repayable under the contract of indebtedness and, ~~where~~ when an indebtedness is repayable in substantially equal installments, the amount of insurance may not exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. Insurance on agricultural ~~credit transaction~~ loan commitments, not exceeding one year in duration, may be written up to the amount of the loan commitment, on a nondecreasing or level term plan. Insurance on educational ~~credit transaction~~ loan commitments may be written for ~~the amount of the portion of such commitment that has not been advanced by the creditor~~ unpaid indebtedness plus any unused commitment.
 - b. In the absence of any preexisting condition exclusions, the amount of insurance payable in the event of death due to natural causes may be limited to the balance as the balance existed six months before the date of death if:
 - (1) There has been one increase or more in the outstanding balance during the six-month period, other than those due to the accrual of interest or late charges; and

- (2) Evidence of individual insurability has not been required during the six-month period.
- c. Other patterns of insurance may be used which are not inconsistent with this subsection including those providing coverage for lease payments or lump sum purchase at the end of the lease.
2. a. The total amount of periodic indemnity payable by credit accident and health insurance or by credit unemployment insurance in the event of disability or unemployment, as defined in the policy, may not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness gross debt; and the amount of each periodic indemnity payment may not exceed the original indebtedness gross debt divided by the number of periodic installments.
- b. Notwithstanding subdivision a, for credit accident and health insurance or for credit unemployment insurance written in connection with an open-end credit agreement, the amount of insurance may not exceed the gross debt which would accrue on that amount using the periodic indemnity. Subject to any policy maximums, the periodic indemnity may not be less than the creditor's minimum repayment schedule.
3. a. For credit property insurance sold in conjunction with a closed-end transaction, an insurer may not issue credit property insurance coverage unless the amount financed exceeds three hundred dollars.
- b. For credit property insurance sold in conjunction with a closed-end transaction, the amount of credit property insurance may not exceed the underlying credit transaction.

SECTION 6. AMENDMENT. Section 26.1-37-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-06. Term of consumer credit life insurance and credit accident and health insurance. The

1. Effective date of coverage:
- a. For consumer credit insurance made available to and elected by the debtor before or contemporaneous with a credit transaction to which the insurance relates, the term of any credit life insurance or credit accident and health insurance, subject to acceptance by the insurer, commences on the date when the debtor becomes obligated to the creditor, except that where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to the indebtedness commences on the effective date of the policy. Where when evidence of individual insurability is required and the evidence is furnished more than thirty days after the date when the debtor becomes obligated to the creditor, the term of the credit insurance may commence on the date on which the insurer determines the evidence to be satisfactory; and in that event there must be an

appropriate refund or adjustment of any charge to the debtor for insurance. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force must be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund must be paid or credited as provided in section 26.1-37-08.

- b. For insurance coverage made available to and elected by the debtor on a date subsequent to the date of the consumer credit transaction to which the insurance relates, the insurance, subject to acceptance by the insurer, commences on a date not earlier than the date the election is made by the debtor nor later than thirty days following the date on which the insurance company accepts the risk for coverage, according to an objective method such as one related to a particular date within a billing or repayment cycle or a calendar month.
- c. Notwithstanding the provisions of subdivisions a and b, when a group policy provides coverage with respect to debts existing on the policy effective date, the insurance relating to the debt shall not commence before the effective date of the group policy.
- d. A charge for insurance may not be made to the debtor and retained by the creditor or insurer for any time prior to commencement of the consumer credit insurance to which the charge is related.

2. Termination date of coverage:

- a. The term of any consumer credit insurance may not extend beyond the termination date specified in the policy. The termination date of insurance may precede, coincide with, or follow the scheduled maturity date of the debt to which it relates, subject to any other requirements and restrictions of this chapter.
- b. The term of any consumer credit insurance may not extend more than fifteen days beyond the scheduled maturity date of the debt except when extended without additional cost to the debtor or except when extended pursuant to a written agreement, signed by the debtor, in connection with a variable interest rate credit transaction or a deferral, renewal, refinancing, or consolidation of debt.
- c. If the debt is discharged due to renewal, refinancing, or consolidation prior to the scheduled termination date of the insurance, any insurance in force must be terminated before any new insurance may be written in connection with the renewed, refinanced, or consolidated debt.
- d. In all cases of termination of insurance prior to the scheduled termination of the insurance, an appropriate refund or credit to the debtor must be made of any unearned insurance charge paid by the debtor for a term of insurance after the date of the termination, except that a refund is not required of a charge made for insurance if the insurance is terminated by performance of the insurer's obligation with respect to the insurance.

- e. An insured debtor may terminate consumer credit insurance at any time by providing advance request to the insurer. The individual policy or group certificate may require that the request be in writing or that the debtor surrender the individual policy or group certificate or both. The debtor's right to terminate coverage may also be subject to the terms of the credit transaction contract.

SECTION 7. AMENDMENT. Section 26.1-37-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-07. Provisions of policies and certificates of insurance - Disclosure to debtors.

1. Before the debtor elects to purchase consumer credit insurance in connection with a credit transaction, the following must be disclosed to the debtor in writing:
 - a. That the purchase of consumer credit insurance is optional and not a condition of obtaining credit approval.
 - b. If more than one kind of consumer credit insurance is being made available to the debtor, whether the debtor can purchase each kind separately or the multiple coverages only as a package.
 - c. The conditions of eligibility, if any.
 - d. That if the consumer has other insurance that covers the risk, the consumer may not want or need credit insurance.
 - e. That within the first thirty days after receiving the individual policy or group certificate, the debtor may cancel the coverage and have all premiums paid by the debtor refunded or credited. Thereafter, the debtor may cancel the policy at any time during the term of the loan and receive a refund of any of the unearned premium. However, only in those instances where insurance is a requirement for the extension of credit, the debtor may be required to offer evidence of alternative insurance acceptable to the creditor at the time of cancellation.
 - f. A brief description of the coverage, including a description of the amount, the term, any exceptions, limitations, and exclusions, the insured event, any waiting or elimination period, any deductible, any applicable waiver of premium provision, to whom the benefits would be paid, and the premium rate for each coverage or for all coverages in a package.
 - g. That if the premium or insurance charge is financed, it will be subject to finance charges at the rate applicable to the credit transaction.
2. The disclosures in subsection 1 must be provided in the following manner:
 - a. In connection with consumer credit insurance offered contemporaneously with the extension of credit or offered through

the application for the policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home-office address of the insurer, the name or names of the debtor, the premium or amount of payment by the debtor, ~~if any, separately for credit life the insurance and credit accident and health insurance,~~ the amount, term, and a brief description of the coverage provided, must be delivered to the debtor at the time the ~~indebtedness debt~~ debt is incurred or the election to purchase coverage is made. The copy of the application or notice of proposed insurance must also refer exclusively to insurance coverage, and must be separate and apart from the loan, sale, or other credit statement of account, instrument, or agreement, unless the information required by this subsection is prominently set forth in that material. Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the ~~indebtedness debt~~ debt is incurred or the election to purchase coverage is made, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance must state that upon acceptance by the insurer, the insurance becomes effective as provided in section 26.1-37-06.

6. The application, notice of proposed insurance, or certificate may be used to fulfill all of the requirements of subsections 1 and 4 if it contains all of the information required by those subsections.
7. The debtor has thirty days from the date the debtor receives either the individual policy or the group certificate to review the coverage purchased. At any time within the thirty-day period, the debtor may contact the creditor or insurer issuing the policy or certificate and request that the coverage be canceled. The individual policy or group certificate may require the request to be in writing or that the policy or certificate be returned to the insurer, or both. The debtor must, within thirty days of the request, receive a full refund or credit of all premiums or insurance charges paid by the debtor.
8. If the named insurer does not accept the risk, the debtor must receive a policy or certificate of insurance setting forth the name and home-office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance an appropriate refund must be made within thirty days. If no insurer accepts the risk, then all premiums paid must be refunded or credited within thirty days of application to the person entitled thereto.
9. For the purpose of subsection 5, an individual policy or group certificate delivered in conjunction with an open-end consumer credit agreement or any consumer credit insurance requested by the debtor after the date of the debt must be deemed to be delivered at the time the debt is incurred or election to purchase coverage is made if the delivery occurs within thirty days of the date the insurance is effective.
10. An individual policy or group certificate delivered in conjunction with an open-end credit agreement continues from its effective date through the term of the agreement unless the individual policy or group certificate is terminated in accordance with its terms at an earlier date.

11. Credit property insurance coverage, at a minimum, must include the coverages in the standard fire policy with coverage attachment and extended coverage endorsement and must cover a substantial risk of loss of or damage to the property related to the credit transaction.

SECTION 8. AMENDMENT. Section 26.1-37-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-08. Premiums and refunds.

1. An insurer may revise its schedules of premium rates from time to time and shall file the revised schedules with the commissioner. No insurer may issue any consumer credit life insurance policy or credit accident and health insurance policy or group certificate for which the premium rate exceeds that determined by the schedules of the insurer as on file with the commissioner. The commissioner may adopt rules to assure that the premium rates are reasonable in relation to the benefits provided.
2. Each individual policy or group certificate must provide ~~that~~ for a refund in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any insurance and upon notice to the insurer. The refund of an amount paid by the debtor for insurance must be paid or credited promptly to the person entitled thereto; provided, however, that the commissioner shall prescribe a minimum refund and no refund which would be less than the minimum need be made. Refund formulas which an insurer desires to use must develop refunds that are at least as favorable to the debtor as refunds equal to the premium cost of scheduled benefits subsequent to the date of cancellation or termination, computed at the schedule of premium rates in effect on the date of issue. The formula to be used in computing the refund must be filed with and approved by the commissioner.
3. If a creditor requires a debtor to make any payment for consumer credit life insurance or credit accident and health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to the debtor and shall promptly make an appropriate credit to the account.
4. The amount charged to a debtor for any consumer credit life or credit health and accident insurance may not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.
5. This chapter does not authorize any payments for insurance prohibited under any law or rule governing credit transactions.

SECTION 9. AMENDMENT. Section 26.1-37-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-09. Applicability of credit life and health policy simplification standards.

4. ~~Except as provided in subsection 3, sections 26.1-37-09 through 26.1-37-12 apply to all~~ All individual and group credit life insurance and credit accident and health insurance policies and insurance certificates

under group credit life and accident and health insurance policies filed after June 30, 1982. No policy may be delivered or issued for delivery in this state after June 30, 1986, unless the policy form has been approved by the commissioner or is permitted to be issued under sections ~~26.1-37-09 through 26.1-37-12~~. Any policy form that has been approved or permitted to be issued prior to July 1, 1986, and that meets the standards set by sections ~~26.1-37-09 through 26.1-37-12~~ need not be refiled for approval, but may continue to be delivered or issued for delivery in this state upon the filing with the commissioner of a list of the forms identified by form number and accompanied by a certificate as to each such form in the manner provided in subsection 6 of section ~~26.1-37-10~~ must comply with sections 26.1-33-29 through 26.1-33-32 and 26.1-36-13 through 26.1-36-16, respectively.

- ~~2. The commissioner may extend the dates in subsection 1.~~
- ~~3. Sections 26.1-37-09 through 26.1-37-12 do not apply to:~~
 - ~~a. Any policy that is a security subject to federal jurisdiction.~~
 - ~~b. Any form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for, a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates the form must be approved under sections 26.1-37-09 through 26.1-37-12.~~
 - ~~e. The renewal of a policy delivered or issued for delivery prior to the dates such forms must be approved under sections 26.1-37-09 through 26.1-37-12.~~
- ~~4. No other state law setting language simplification standards applies to policy form.~~

SECTION 10. AMENDMENT. Section 26.1-37-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-13. Claims.

1. All claims must be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims must be settled as soon as possible and in accordance with the terms of the insurance contract.
2. All claims must be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of the claimant to one specified.
3. No plan or arrangement may be used whereby any person, firm, or corporation other than the insurer or its designated claim representative is authorized to settle or adjust claims. The creditor may not be designated as claim representative for the insurer in adjusting claims; provided, that a group policyholder may, by arrangement with the group insurer, draw drafts ~~or~~ checks, or electronic transfers in payment of claims due to the group policyholder subject to audit and review by the insurer.

SECTION 11. AMENDMENT. Section 26.1-37-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-37-14. Existing insurance - Choice of insurer. When consumer credit life insurance or credit accident and health insurance is required as additional security for any ~~indebtedness~~ debt, the debtor shall, upon request to the creditor, ~~has~~ have the option of furnishing the required amount of insurance through existing insurance policies owned or controlled by the debtor or of procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this state.

SECTION 12. REPEAL. Sections 26.1-37-04, 26.1-37-10, 26.1-37-11, and 26.1-37-12 of the North Dakota Century Code are repealed.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 279

SENATE BILL NO. 2192

(Senator Grindberg)

INSURANCE GUARANTY ASSOCIATIONS AND INSURANCE CONTRACTS

AN ACT to create and enact a new subsection to section 26.1-38.1-05 of the North Dakota Century Code, relating to the powers and duties of a life and health insurance guaranty association; and to amend and reenact subsection 3 of section 26.1-38.1-01 of the North Dakota Century Code, relating to equity indexed life and annuity insurance contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 26.1-38.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. This chapter does not provide coverage for:
 - a. Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy owner or contract owner;
 - b. Any policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;
 - c. Any portion of a policy or contract to the extent that the rate of interest on which ~~the portion of the policy or contract~~ is based or to the extent that the rate of interest, crediting of a rate of interest, or similar factor determined by using an index or other external reference stated in the policy or contract which is employed in calculating returns or changes in value:
 - (1) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and
 - (2) On and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

- d. A portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others, to the extent that such plan or program is self-funded or uninsured including benefits payable by an employer association or other person under:
 - (1) A multiple employer welfare arrangement as defined in 29 U.S.C. section 1144;
 - (2) A minimum premium group insurance plan;
 - (3) A stop-loss group insurance plan; or
 - (4) An administrative services only contract;
- e. Any portion of a policy or contract to the extent that it provides for dividends or experience rating credits, voting rights, or payment of any fees or allowances to any person, including the policy owner or contract owner, in connection with the service to or administration of such policy or contract;
- f. Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;
- g. Any unallocated annuity contract issued to or in connection with a benefit plan protected under the federal pension benefit guaranty corporation regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan;
- h. Any portion of any unallocated annuity contract which is not issued to, or in connection with, a specific employee, union, or association of natural persons benefit plan or a government lottery;
- i. A portion of a policy or contract to the extent that the assessments required by section 26.1-38.1-06 with respect to the policy or contract are preempted by federal or state law;
- j. An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including:
 - (1) Claims based on marketing materials;
 - (2) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;
 - (3) Misrepresentations of or regarding policy benefits;
 - (4) Extracontractual claims; or
 - (5) A claim for penalties or consequential or incidental damages; ~~and~~

- k. A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer; and

- l. A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy owner's or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this subdivision, the interest or changes in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and is not subject to forfeiture.

SECTION 2. A new subsection to section 26.1-38.1-05 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Subject to approval of the receivership court, the association, in carrying out association duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsections 2 and 3, may issue substitute coverage for a policy or contract that provides a rate of interest, crediting of a rate of interest, or similar factor determined by using an index or other external reference stated in the policy or contract which is employed in calculating returns or changes in value by issuing an alternative policy or contract if:

- a. Instead of the index or other external reference provided in the replaced policy or contract, the alternative policy or contract provides for a fixed interest rate, payment of dividends with minimum guarantees, or different method for calculating interest or changes in value;

- b. There is no requirement for evidence of insurability, a waiting period, or other exclusion that would not have applied under the replaced policy or contract; and

- c. The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 280

HOUSE BILL NO. 1378

(Representatives Severson, Berg, Kasper)

AUTOMOBILE INSURANCE LIMITATIONS AND EXCLUSIONS

AN ACT to create and enact a new subsection to section 26.1-40-15.6 of the North Dakota Century Code, relating to limitations on automobile insurance; and to amend and reenact sections 26.1-40-16 and 26.1-40-16.1 of the North Dakota Century Code, relating to persons excluded from automobile insurance policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-40-15.6 of the North Dakota Century Code is created and enacted as follows:

While operating a motor vehicle in which the individual is specifically excluded.

SECTION 2. AMENDMENT. Section 26.1-40-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-16. Exclusion of spouse of named insured persons - Restrictive endorsements. ~~No insurer is responsible under~~ By written agreement with the named insured, a private passenger automobile insurance policy covering an automobile ~~or other motor vehicle~~ registered or principally garaged in this state ~~from any liability for any claims resulting from the operation of the motor vehicle by a spouse of the named insured who resides in the same household if an endorsement on the policy excludes that spouse from coverage under the policy and the spouse excluded signs the endorsement. If the named insured expressly or impliedly consents to the operation of a secured motor vehicle by a spouse excluded under the policy, the named insured is not relieved of personal liability as provided by subsection 5 of section 26.1-41-02~~ may exclude a named individual, individuals, or class of individuals from coverage. The policy may contain a restrictive endorsement reducing the limits of liability, uninsured motorist coverage, underinsured motorist coverage, basic no-fault benefits coverage, or collision coverage while the vehicle is operated by a named individual or class of individuals. However, if the policy does provide liability coverage to a person named in a restrictive endorsement, the coverage may not be less than the minimum provided under section 26.1-40-15.2, section 26.1-40-15.3, subsection 2 of section 26.1-41-01, and section 39-16.1-11. If the policy excludes a named individual, individuals, or class of individuals from all coverage and the named insured expressly or impliedly consents to the operation of a secured motor vehicle by the excluded party, the named insured is not relieved of personal liability as provided by subsection 5 of section 26.1-41-02.

SECTION 3. AMENDMENT. Section 26.1-40-16.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-40-16.1. Payment of benefits to family members of a policyholder.

An automobile insurance policy that provides coverage for bodily injury may not contain any provision limiting payment of benefits or reducing the amount of benefits payable to a person because the person to whom benefits are being paid under that policy is related to the policyholder by blood, marriage, or adoption, or is a foster child, and resides in the same household as the policyholder. However, a relative may be excluded from coverage under section 26.1-40-16.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 281

SENATE BILL NO. 2288

(Senators Fischer, Wardner)
(Representatives Devlin, Kasper)

INSURANCE COMMISSIONER MEDICAL EXAMINATION REPORT

AN ACT to provide for the insurance commissioner to submit a report to the legislative council regarding motor vehicle insurance independent medical examinations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. INSURANCE COMMISSIONER - INDEPENDENT MEDICAL EXAMINATION REPORT TO LEGISLATIVE COUNCIL. Before November 1, 2002, the insurance commissioner shall submit a report to the legislative council regarding motor vehicle insurance independent medical examinations. The report must include an analysis of the impact independent medical examinations have on the provision of motor vehicle insurance benefits in the state; a review of the medical service providers who perform independent medical examinations; a review of how other states regulate independent medical examinations; and any recommendations.

Approved March 28, 2001
Filed March 28, 2001

CHAPTER 282**SENATE BILL NO. 2330**

(Senators T. Mathern, Thane)

(Representative Fairfield)

**AUGMENTATIVE COMMUNICATION DEVICE
INSURANCE STUDY**

AN ACT to provide for a legislative council study relating to insurance coverage for augmentative communication devices and services for children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2001-2002 interim, the coordination of benefits for children with special needs under the age of twenty-one among the department of public instruction, the department of human services, and private insurance companies, with the purpose of optimizing and coordinating resources and expanding services including augmentative communication devices and therapy services. The study, if conducted, must include reports from any private insurance company's task force concerning the coordination of these services. If the study is conducted, the legislative council shall report its findings and recommendations, together with any legislation required to implement its recommendations, to the fifty-eighth legislative assembly.

Approved March 28, 2001

Filed March 28, 2001

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 283

HOUSE BILL NO. 1207

(Representatives DeKrey, Disrud, Kingsbury, Kretschmar, Maragos)

CLERK OF COURT FEES

AN ACT to amend and reenact section 27-05.2-04 of the North Dakota Century Code, relating to receipt of fees and other moneys by clerks of district court and the creation of a special fund; 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 27-05.2-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-05.2-04. (Effective January 4, 2004, through December 31, 2002)
Clerk to keep record of fees - Monthly report to county auditor or state treasurer - Continuing appropriation. The clerk of the district court shall keep a public record of all money received as fees for services rendered as clerk. Within three days after the close of each calendar month, and also at the close of the clerk's term of office for a clerk who has not become a state employee under subsection 3 or 4 of section 27-05.2-02, the clerk shall file with the county auditor a statement under oath showing the amount of fees received as clerk since the date of the clerk's last report and within three days thereafter the clerk shall deposit with the county treasurer the total sum of such fees which must be used for facilities, except fees that the clerk is directed to deposit with the state treasurer or is authorized expressly to retain. Within three days after the close of each calendar month, a clerk who has become a state employee under subsection 3 or 4 of section 27-05.2-02 shall file with the state treasurer a statement under oath showing the amount of fees received by the clerk since the date of the clerk's last report. Within three days thereafter, the clerk shall deposit with the state treasurer the total sum of fees required to be deposited in the general fund or in a designated special fund. The clerk shall forward to the county treasurer any fees received under section 27-05.2-03 which are not required to be deposited in the state general fund or a designated special fund. Those fees must be used for facilities. ~~The clerk may establish a special account in the Bank of North Dakota or in a banking institution designated as a depository of public funds under chapter 21-04~~ A special court receivables fund is established in the state treasury for purposes of depositing any money received by the clerk which is not required to be deposited in the state general fund, a designated different special fund, or the county treasury and which is received as bail or restitution, or otherwise received pursuant to an order of the court. The clerk shall make payments from the special account Moneys in the special fund are appropriated to the judicial branch on a continuing basis for purposes of refunding bail, forwarding restitution amounts to the entitled recipient, or otherwise making payments as directed by an order of the court. To facilitate making payments from the special fund, the clerk may establish a special account in the Bank of North Dakota or in a banking institution designated as a depository of public funds under

chapter 21-04. If money deposited as bail is forfeited, the clerk shall submit the appropriate sum to the state treasurer for deposit in the state general fund. If the clerk is unable to make payments from the special account because the address of the recipient is unknown or the recipient cannot otherwise be located, the clerk shall dispose of the deposited money in accordance with chapter 47-30.1.

(Effective January 1, 2003) Clerk to keep record of fees - Monthly report to county auditor or state treasurer - Continuing appropriation. A clerk of the district court providing clerk services in accordance with subsection 2 or 6 of section 27-05.2-02 shall keep a public record of all money received as fees for services rendered as clerk. Within three days after the close of each calendar month, the clerk shall file with the county auditor a statement under oath showing the amount of fees received as clerk since the date of the clerk's last report and within three days thereafter the clerk shall deposit with the county treasurer the total sum of such fees which must be used for facilities, except fees that the clerk is directed to deposit with the state treasurer or is authorized expressly to retain. Within three days after the close of each calendar month, a clerk who has become a state employee under subsection 3 or 4 of section 27-05.2-02 shall file with the state treasurer a statement under oath showing the amount of fees received by the clerk since the date of the clerk's last report. Within three days thereafter, the clerk shall deposit with the state treasurer the total sum of fees required to be deposited in the general fund or in a designated special fund. The clerk shall forward to the county treasurer any fees received under section 27-05.2-03 which are not required to be deposited in the state general fund or a designated special fund. Those fees must be used for facilities. ~~The clerk may establish a special account in the Bank of North Dakota or in a banking institution designated as a depository of public funds under chapter 21-04~~ A special court receivables fund is established in the state treasury for purposes of depositing any money received by the clerk which is not required to be deposited in the state general fund, a designated different special fund, or the county treasury and which is received as bail or restitution, or otherwise received pursuant to an order of the court. The clerk shall make payments from the special account Moneys in the special fund are appropriated to the judicial branch on a continuing basis for purposes of refunding bail, forwarding restitution amounts to the entitled recipient, or otherwise making payments as directed by an order of the court. To facilitate making payments from the special fund, the clerk may establish a special account in the Bank of North Dakota or in a banking institution designated as a depository of public funds under chapter 21-04. If money deposited as bail is forfeited, the clerk shall submit the appropriate sum to the state treasurer for deposit in the state general fund. If the clerk is unable to make payments from the special account because the address of the recipient is unknown or the recipient cannot otherwise be located, the clerk shall dispose of the deposited money in accordance with chapter 47-30.1.

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

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 284

SENATE BILL NO. 2274

(Senator Dever)

(Representatives Dosch, Meier)

SMALL CLAIMS ACTION FILING

AN ACT to amend and reenact section 27-08.1-02 of the North Dakota Century Code, relating to filing a small claims action.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-08.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-08.1-02. Commencement of action - Claim affidavit. Actions in the small claims court are commenced whenever any person executes and files with the court a claim affidavit, and causes the affidavit to be served by a person of legal age, not a party to or interested in the action, ~~the affidavit~~ on the defendant or mails it to the defendant by certified mail along with a form upon which the defendant must indicate whether a hearing is requested and whether the defendant elects to remove the action to district court. If, within twenty days of service of the affidavit and form, the court has not received a request for a hearing or an election to remove to district court, or if the defendant indicates that a hearing is not requested, a hearing will not be scheduled and judgment may be entered against the defendant by default. If the defendant requests a hearing in small claims court, the hearing must be not less than ten days and not more than thirty days after receipt of the request. Except for an action under subdivision e of subsection 2 of section 27-08.1-01, the mailing, or personal service, may be made anywhere within the state. Forms used in small claims court actions must be approved by the state court administrator and obtained from, or at the direction of, the clerk of district court or in electronic form from the supreme court.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 285

SENATE BILL NO. 2383 (Senators Traynor, Solberg, Trenbeath)

JUROR COMPENSATION

AN ACT to amend and reenact section 27-09.1-14 of the North Dakota Century Code, relating to the compensation of jurors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-09.1-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-09.1-14. Mileage and compensation of jurors. A juror must be paid mileage at the rate provided for state employees in section 54-06-09. A juror must be compensated at the rate of twenty-five dollars for the first day and fifty dollars for each subsequent day of required attendance at sessions of the district court and ten dollars for each day of required attendance at sessions of a coroner's inquest. The mileage and compensation of jurors must be paid by the state for jurors at sessions of the district court. Jurors at coroner's inquests must be paid by the county.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 286

HOUSE BILL NO. 1071

(Judiciary Committee)

(At the request of the Supreme Court)

BOARD OF LAW EXAMINERS

AN ACT to amend and reenact sections 27-11-01, 27-11-03.1, 27-11-06, 27-11-07, 27-11-08, 27-11-09, 27-11-10, 27-11-11, 27-11-12, 27-11-13, 27-11-14, 27-11-15, 27-11-17, 27-11-19, 27-11-22, 27-11-23, 27-11-24, 27-12-02, 27-12-04, and 27-12-06 and subsections 2 and 3 of section 54-57-01 of the North Dakota Century Code, relating to changing the name of the state bar board to the board of law examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-11-01 of the North Dakota Century Code is amended and reenacted as follows:

27-11-01. Practicing law and serving on courts of record without certificate of admission and without payment of annual license fee prohibited - Penalty. Except as otherwise provided by state law or supreme court rule, a person may not practice law, act as an attorney or counselor at law in this state, or commence, conduct, or defend in any court of record of this state, any action or proceeding in which ~~he~~ the person is not a party concerned, nor may a person be qualified to serve on a court of record unless ~~he~~ that person has:

1. Secured from the supreme court a certificate of admission to the bar of this state; and
2. Secured an annual license therefor from the state ~~bar~~ board of law examiners.

Any person who violates this section is guilty of a class A misdemeanor.

SECTION 2. AMENDMENT. Section 27-11-03.1 of the North Dakota Century Code is amended and reenacted as follows:

27-11-03.1. Conviction not bar to certification - Exceptions. Conviction of an offense does not disqualify a person from a certificate of admission and licensure under this chapter unless the state ~~bar~~ board of law examiners and the supreme court determine that the offense has a direct bearing upon a person's ability to serve the public as an attorney and counselor at law, or that the person, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 3. AMENDMENT. Section 27-11-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-11-06. State ~~bar~~ board of law examiners established - Appointment and qualifications of board members. The state ~~bar~~ board ~~must consist of law examiners~~ consists of at least three but no more than five members appointed by the supreme court. At least three of the members of the board must be resident licensed members of the bar. Each board member must be appointed from a list of nominees

submitted by the bar association of the state of North Dakota. The supreme court may return the list to the bar association for additional nominees. If the bar association nominates a member for reappointment, a list of nominees is not required unless requested by the supreme court.

SECTION 4. AMENDMENT. Section 27-11-07 of the North Dakota Century Code is amended and reenacted as follows:

27-11-07. Oath of member of state ~~bar~~ board of law examiners. Each member of the state ~~bar~~ board of law examiners, within ten days after ~~his~~ appointment, shall qualify by taking the oath provided for civil officers.

SECTION 5. AMENDMENT. Section 27-11-08 of the North Dakota Century Code is amended and reenacted as follows:

27-11-08. Terms and removal of members of state ~~bar~~ board of law examiners. Members of the state ~~bar~~ board of law examiners must be appointed for a term of six years so arranged that one term expires on January first of every odd-numbered year. Any member of the state ~~bar~~ board may be removed at the pleasure of the supreme court.

SECTION 6. AMENDMENT. Section 27-11-09 of the North Dakota Century Code is amended and reenacted as follows:

27-11-09. Filling vacancies on state ~~bar~~ board of law examiners. If a vacancy in the membership of the state ~~bar~~ board of law examiners occurs by reason of the death, resignation, removal, or incapacity to serve of any member thereof, a successor must be appointed by the supreme court for the unexpired portion of the term of such member.

SECTION 7. AMENDMENT. Section 27-11-10 of the North Dakota Century Code is amended and reenacted as follows:

27-11-10. Officers of state ~~bar~~ board of law examiners. The state ~~bar~~ board of law examiners shall elect one of its members president, who ~~shall hold said~~ holds office for a term of two years and until ~~his~~ a successor is duly elected and qualified. The clerk of the supreme court must be ex officio secretary-treasurer of the board.

SECTION 8. AMENDMENT. Section 27-11-11 of the North Dakota Century Code is amended and reenacted as follows:

27-11-11. Compensation of members of state ~~bar~~ board of law examiners. Each member of the state ~~bar~~ board of law examiners shall receive twenty-five dollars per day for the actual time devoted ~~by him~~ to the official duties of his office, and, in addition thereto, ~~shall~~ is entitled to receive the actual expenses incurred ~~by him~~ in attending to his official duties while away from ~~his~~ the member's place of residence.

SECTION 9. AMENDMENT. Section 27-11-12 of the North Dakota Century Code is amended and reenacted as follows:

27-11-12. Compensation of secretary-treasurer of state ~~bar~~ board of law examiners. The secretary-treasurer of the state ~~bar~~ board of law examiners must be allowed such compensation for ~~his~~ services and ~~such~~ expenses as the board ~~shall~~ determine determines.

SECTION 10. AMENDMENT. Section 27-11-13 of the North Dakota Century Code is amended and reenacted as follows:

27-11-13. Powers of state ~~bar~~ board of law examiners. The state ~~bar~~ board of law examiners may employ such assistants, purchase such supplies, and incur such expense as may be necessary to carry out the duties imposed upon it, but expenditures ~~therefor~~ may not exceed the moneys in the state bar fund. It ~~shall possess~~ possesses such other powers and duties relating to the admission of applicants to the bar as prescribed by state law or the supreme court.

SECTION 11. AMENDMENT. Section 27-11-14 of the North Dakota Century Code is amended and reenacted as follows:

27-11-14. Payment of compensation and expenditures of state ~~bar~~ board of law examiners. All claims for compensation of members and officers of the state ~~bar~~ board of law examiners and all claims for expenditures made by ~~such~~ the board must be submitted to the office of ~~the~~ management and budget on sworn vouchers as required by law and must be paid by the state treasurer of ~~this state~~ out of the state bar fund.

SECTION 12. AMENDMENT. Section 27-11-15 of the North Dakota Century Code is amended and reenacted as follows:

27-11-15. Records to be kept by state ~~bar~~ board of law examiners. The state ~~bar~~ board of law examiners shall keep a record of all of its proceedings and a record of all applications for admission and admissions to the bar of this state, and shall enroll in a book to be kept for ~~such~~ this purpose the name of each person admitted to practice in this state as an attorney at law.

SECTION 13. AMENDMENT. Section 27-11-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-11-17. Fee payable by all applicants for admission to bar - Disposition of fees. The state ~~bar~~ board of law examiners is entitled to receive a fee to be determined by the ~~state bar~~ board with the approval of the supreme court of an amount not to exceed one hundred fifty dollars from each applicant for admission to the bar of this state who submits to examination by the ~~state bar~~ board and a fee to be determined by the ~~state bar~~ board with the approval of the supreme court of an amount not to exceed four hundred dollars from each applicant for admission to the bar of this state who seeks admission upon motion in accordance with state law or supreme court rule. All fees received must be deposited and disbursed in accordance with section 54-44-12.

SECTION 14. AMENDMENT. Section 27-11-19 of the North Dakota Century Code is amended and reenacted as follows:

27-11-19. Supreme court to order issuance of certificate of admission. The supreme court, after receiving ~~from~~ and considering the state ~~bar~~ board a of law examiners' report of the results of an examination of applicants for admission to the bar of this state and the recommendations of ~~such~~ the board, and after considering ~~the same~~, shall enter an order authorizing the issuance of certificates of admission to the bar to ~~such~~ those applicants ~~therefor~~ as ~~such~~ the court considers entitled ~~thereto~~ to admission. ~~Such order may be given in term time or in vacation and the~~ The issuance of ~~such~~ the certificates is dependent upon the taking of the oath and pledge of office by the applicants at ~~such~~ the time and place as ~~such~~ the order may provide provides.

SECTION 15. AMENDMENT. Section 27-11-22 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-11-22. Annual licenses to practice law and to serve on certain courts - Requirement - Issuance - Fees. ~~Every~~ A person who has an unrevoked certificate of admission to the bar of this state and who desires to engage in the practice of law, or who is to serve as a judge of a court of record, ~~shall~~ must secure an annual license from the state ~~bar~~ board of law examiners on or before January first of each year. The secretary-treasurer of the board shall issue the license upon compliance with the rules adopted or approved by the supreme court to assure the professional competence of attorneys, and upon payment of a fee established by the state bar association at its annual meeting, by a majority vote of its members in attendance at the meeting, not to exceed four hundred dollars. The license is valid for the calendar year for which it is issued. Issuance of an annual license to practice law may not be conditioned upon payment of any surcharge, assessment, or fee in excess of the maximum fee established by this section. This section does not prohibit imposition of a reasonable fee for filing and processing reports of compliance with continuing education requirements.

SECTION 16. AMENDMENT. Section 27-11-23 of the North Dakota Century Code is amended and reenacted as follows:

27-11-23. Fees from annual licenses to be deposited in state bar fund. The secretary-treasurer of the state ~~bar~~ board of law examiners shall deposit and disburse all fees and moneys collected by the board in accordance with section 54-44-12.

SECTION 17. AMENDMENT. Section 27-11-24 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-11-24. Expenditure of state bar fund. Moneys in the state bar fund must be used to pay:

1. The bar association of the state of North Dakota the sum required to be paid ~~by the provisions of~~ under section 27-12-04;
2. The compensation and expenses allowed by law to each member and to the secretary-treasurer of the state ~~bar~~ board of law examiners;
3. The expenses incurred by the state ~~bar~~ board of law examiners in conducting examinations of applicants for admission to the bar of this state and expenses of the ~~state bar~~ board or a grievance committee of the supreme court in investigating charges warranting the suspension or disbarment of members of the bar, or in prosecutions brought and conducted before the supreme court for the discipline of such members;
4. The expenses incurred by the bar association of the state of North Dakota in conducting investigations and prosecutions of proceedings instituted for the purpose of protecting the public and the bar of North Dakota against unauthorized practice by corporations, limited liability companies, or persons not licensed to practice law; and
5. The necessary expenses of conducting and supplying the offices of the state ~~bar~~ board of law examiners.

SECTION 18. AMENDMENT. Section 27-12-02 of the North Dakota Century Code is amended and reenacted as follows:

27-12-02. Membership of state bar association. The membership of the state bar association of North Dakota consists of every person:

1. Who has secured an annual license to practice law in this state from the state ~~bar~~ board of law examiners in accordance with section 27-11-22; or
2. Who has an unrevoked certificate of admission to the bar of this state and who has paid an annual membership fee to the state bar association. The annual fee must be established by the state bar association at its annual meeting, by a majority vote of its members in attendance at the meeting, not to exceed eighty percent of the maximum fee for an annual license to practice law in this state as prescribed in section 27-11-22.

SECTION 19. AMENDMENT. Section 27-12-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-12-04. Moneys payable from state bar fund to state bar association. The state bar association of North Dakota, out of the state bar fund, must receive, for operation of the lawyer discipline system, ~~fifty dollars of each license fee beginning January 1, 1998,~~ and seventy-five dollars of each license fee beginning January 1, 1999. Eighty percent of the remaining amount of the annual license fees paid by licensed members must be paid to the state bar association for the purpose of administering and operating the association. These sums must be paid quarterly to the association by the state ~~bar~~ board of law examiners upon vouchers drawn in accordance with section 54-44-12.

SECTION 20. AMENDMENT. Section 27-12-06 of the North Dakota Century Code is amended and reenacted as follows:

27-12-06. Method of expenditure of association's funds - Annual report of receipts and disbursements. Expenditures of funds from the state bar association special fund which consists of all moneys or fees collected or received by the association and which is deposited or disbursed in accordance with section 54-44-12, must be approved by the president and executive director of said association. The secretary-treasurer of said association, in addition to the duties imposed ~~upon him~~ by the constitution, bylaws, and rules of the association, annually shall file in the office of the secretary-treasurer of the state ~~bar~~ board of law examiners an itemized statement of the receipts and disbursements of said association.

¹⁴⁵ **SECTION 21. AMENDMENT.** Subsections 2 and 3 of section 54-57-01 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

¹⁴⁵ Section 54-57-01 was also amended by section 30 of House Bill No. 1030, chapter 293.

2. The office is under the direction of a director of administrative hearings who must be free of any association that would impair the director's ability to function officially in a fair and objective manner. The director must be an attorney at law in good standing, admitted to the bar in this state, and currently licensed by the state ~~bar~~ board of law examiners. The director of administrative hearings must be appointed by the governor and confirmed by the senate and shall hold office for a term of six years, the term beginning July first of the year of appointment and ending June thirtieth of the sixth calendar year after appointment.
3. The director of administrative hearings may preside as an administrative law judge at administrative hearings and may employ or appoint additional administrative law judges to serve in the office as necessary to fulfill the duties of office as described in section 54-57-04 and section 28-32-08.5 and to provide administrative law judges to preside at administrative hearings as requested by agencies. ~~After August 1, 1995, the~~ The director of administrative hearings may employ or appoint only such additional administrative law judges who are attorneys at law in good standing, admitted to the bar in the state, and currently licensed by the state ~~bar~~ board of law examiners. The director may delegate to an employee the exercise of a specific statutory power or duty as deemed advisable, subject to the director's control, including the powers and duties of a deputy director. All administrative law judges must be classified employees, except that the director of administrative hearings must be an unclassified employee who only may be removed, during a term of office, for cause. Each administrative law judge must have a demonstrated knowledge of administrative practices and procedures and must be free of any association that would impair the person's ability to function officially in a fair and objective manner.

Approved March 19, 2001

Filed March 19, 2001

CHAPTER 287**SENATE BILL NO. 2396**

(Senators Holmberg, Traynor, Trenbeath)

**ATTORNEY PROPERTY DELIVERY AND BOND
ELIMINATED**

AN ACT to repeal sections 27-13-05, 27-13-06, and 27-13-07 of the North Dakota Century Code, relating to an attorney's refusal to deliver a client's money or property and the furnishing of a bond.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 27-13-05, 27-13-06, and 27-13-07 of the North Dakota Century Code are repealed.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 288

HOUSE BILL NO. 1358 (Representatives Mahoney, Keiser) (Senators Holmberg, C. Nelson)

UNIFORM JUVENILE COURT ACT REVISIONS

AN ACT to amend and reenact section 27-20-02, subsection 1 of section 27-20-06, sections 27-20-08, 27-20-10, and 27-20-17, subsection 2 of section 27-20-20.1, sections 27-20-22, 27-20-25, and 27-20-31, subsection 4 of section 27-20-32.2, subsections 2 and 4 of section 27-20-36, and subsection 3 of section 27-20-47 of the North Dakota Century Code, relating to definitions, filing petitions, duties of juvenile supervisors, informal adjustments, continued shelter care, termination of parental rights, and disposition of a delinquent child under the Uniform Juvenile Court Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁶ **SECTION 1. AMENDMENT.** Section 27-20-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-02. Definitions. As used in this chapter:

1. "Abandon" means:
 - a. As to a parent of a child not in the custody of that parent, failure by the noncustodial parent significantly without justifiable cause:
 - (1) To communicate with the child; or
 - (2) To provide for the care and support of the child as required by law; or
 - b. As to a parent of a child in that parent's custody:
 - (1) To leave the child for an indefinite period without making firm and agreed plans, with the child's immediate caregiver, for the parent's resumption of physical custody;
 - (2) Following the child's birth or treatment at a hospital, to fail to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
 - (3) To willfully fail to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs.

¹⁴⁶ Section 27-20-02 was also amended by section 9 of House Bill No. 1049, chapter 55, and section 2 of Senate Bill No. 2116, chapter 136.

2. "Abandoned infant" means a child who has been abandoned before reaching the age of one year.
3. "Aggravated circumstances" means circumstances in which a parent:
 - a. Abandons, tortures, chronically abuses, or sexually abuses a child;
 - b. Fails to make substantial, meaningful efforts to secure treatment for the parent's addiction, mental illness, behavior disorder, or any combination of those conditions for a period equal to the lesser of:
 - (1) One year; or
 - (2) One-half of the child's lifetime, measured in days, as of the date a petition alleging aggravated circumstances is filed;
 - c. Engages in conduct prohibited under sections 12.1-20-01 through 12.1-20-08 or chapter 12.1-27.2, in which a child is the victim or intended victim;
 - d. Engages in conduct that constitutes one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:
 - (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subdivision a of subsection 1 of section 14-09-22;
 - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03; or
 - (3) A violation of section 12.1-17-02 in which the victim has suffered serious bodily injury;
 - e. Engages or attempts to engage in conduct, prohibited under sections 12.1-17-01 through 12.1-17-04, in which a child is the victim or intended victim; or
 - f. Has been incarcerated under a sentence for which the latest release date is:
 - (1) In the case of a child age nine or older, after the child's majority; or
 - (2) In the case of a child, after the child is twice the child's current age, measured in days.
4. "Child" means an individual who is:
 - a. Under the age of eighteen years and is neither married and cohabiting with spouse nor in the military service of the United States; or
 - b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years.

5. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.
6. "Delinquent act" means an act designated a crime under the law, including local ordinances or resolutions of this state, or of another state if the act occurred in that state, or under federal law, and the crime does not fall under subdivision c of subsection ~~46~~ 18 and is not a traffic offense as defined in subsection ~~45~~ 17.
7. "Delinquent child" means a child who has committed a delinquent act and is in need of treatment or rehabilitation.
8. "Deprived child" means a child who:
 - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of the child's parents, guardian, or other custodian;
 - b. Has been placed for care or adoption in violation of law;
 - c. Has been abandoned by the child's parents, guardian, or other custodian;
 - d. Is without proper parental care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of the child's parent or parents, and that such lack of care is not due to a willful act of commission or act of omission by the child's parents, and care is requested by a parent; 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.
9. "Detention" means a physically secure facility with locked doors and does not include shelter care, attendant care, or home detention.
10. "Fit and willing relative or other appropriate individual" means a relative or other individual who has been determined, after consideration of an assessment that includes a criminal history record investigation under chapter 50-11.3, to be a qualified person under chapter 30.1-27, and who consents in writing to act as a legal guardian.
- ~~40.~~ 11. "Home" when used in the phrase "to return home" means the abode of the child's parent with whom the child formerly resided.
- ~~44.~~ 12. "Juvenile court" means the district court of this state.
- ~~42.~~ 13. "Permanency hearing" means a hearing, conducted with respect to a child who is in foster care, to determine the permanency plan for the child which includes:

- a. Whether and, if applicable, when the child will be returned to the parent;
 - b. Whether and, if applicable, when the child will be placed for adoption and the state will file a petition for termination of parental rights;
 - c. Whether and, if applicable, when a fit and willing relative or other appropriate individual will be appointed as a legal guardian;
 - d. In cases in which a compelling reason has been shown that it would not be in the child's best interests to return home, to have parental rights terminated, to be placed for adoption, to be placed with a fit and willing relative, or to be placed with a legal guardian, whether and, if applicable, when the child will be placed in another planned permanent living arrangement;
 - e. In the case of a child who has been placed in foster care outside the state in which the home of the parents is located, or if the parents maintain separate homes, outside the state in which the home of the parent who was the child's primary caregiver is located, whether the out-of-state placement continues to be appropriate and in the child's best interests; and
 - f. In the case of a child who has attained age sixteen, the services needed to assist the child to make the transition from foster care to independent living.
- ~~43.~~ 14. "Protective supervision" means supervision ordered by the court of children found to be deprived or unruly.
- ~~44.~~ 15. "Relative" means:
- a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt, uncle, great-uncle, nephew, niece, or first cousin;
 - b. An individual with a relationship to the child, derived through a current or former spouse of the child's parent, similar to a relationship described in subdivision a;
 - c. An individual recognized in the child's community as having a relationship with the child similar to a relationship described in subdivision a; or
 - d. The child's stepparent.
- ~~45.~~ 16. "Shelter care" means temporary care of a child in physically unrestricted facilities.
- ~~46.~~ 17. "Traffic offense" means a violation of a law or local ordinance or resolution governing the operation of a vehicle upon the highways of this state, or the waterways within or adjoining this state, by a child who has been issued a valid operator's license or permit if one is required, other than manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of

section 12.1-16-03; and driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.

- ~~47.~~ 18. "Unruly child" means a child who:
- a. Is habitually and without justification truant from school;
 - b. Is habitually disobedient of the reasonable and lawful commands of the child's parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of the child or others;
 - c. Has committed an offense applicable only to a child;
 - d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; or
 - e. Has committed an offense in violation of section 39-08-18 or 5-01-08; and
 - f. In any of the foregoing instances is in need of treatment or rehabilitation.
- ~~48.~~ 19. "Willfully" has the meaning provided in section 12.1-02-02.

SECTION 2. AMENDMENT. Subsection 1 of section 27-20-06 of the North Dakota Century Code is amended and reenacted as follows:

1. For the purpose of carrying out the objectives and purposes of this chapter and subject to the limitations of this chapter or imposed by the court, a juvenile supervisor shall:
 - a. Make investigations, reports, and recommendations to the juvenile court.
 - b. Receive and examine complaints and charges of delinquency, unruly conduct, or deprivation of a child for the purpose of considering the commencement of proceedings under this chapter.
 - c. Supervise and assist a child placed on probation or in his protection, supervision, or care by order of the court or other authority of law.
 - d. Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable.
 - e. Take into custody and detain a child who is under his supervision or care as a delinquent, unruly, or deprived child if he has reasonable cause to believe that the child's health or safety is in imminent danger, or that he may abscond or be removed from the jurisdiction of the court, or when ordered by the court pursuant to this chapter. Except as provided by this chapter, a juvenile supervisor does not have the powers of a law enforcement officer. He may not conduct accusatory proceedings under this chapter against a child who is or may be under his care or supervision.

- f. Administer oaths.
- g. Take acknowledgments of instruments for the purpose of this chapter.
- h. Make such temporary order not to exceed ~~thirty days~~ ninety-six hours for the custody and control of a child alleged to be deprived as may be deemed appropriate. ~~Such an~~ The order must be reduced to writing within twenty-four hours, excluding holidays and weekends.
- i. Perform all other functions designated by this chapter or under section 27-05-30 or by order of the court pursuant thereto, including, if qualified, those of a referee. ~~Juvenile supervisors who were serving as juvenile commissioners on July 1, 1969, may perform the functions of a referee under this chapter without being members of the bar.~~
- j. Perform such functions relating to domestic relations matters as directed by his appointing district judge, acting in accordance with section 27-05-29.

SECTION 3. AMENDMENT. Section 27-20-08 of the North Dakota Century Code is amended and reenacted as follows:

27-20-08. Commencement of proceedings. A proceeding under this chapter may be commenced:

1. By transfer of a case from another court as provided in section 27-20-09;
2. By the court accepting jurisdiction as provided in section 27-20-40 or accepting supervision of a child as provided in section 27-20-42; or
3. In other cases by the filing of a petition as provided in this chapter. The petition and all other documents in the proceeding must be entitled "In the interest of _____, a child". If a child is in shelter care, the petition must be filed within thirty days of the shelter care hearing under section 27-20-17. If the petition is not filed, the child must be released from shelter care.

SECTION 4. AMENDMENT. Section 27-20-10 of the North Dakota Century Code is amended and reenacted as follows:

27-20-10. Informal adjustment.

1. Before a petition is filed, the juvenile supervisor or other officer of the court designated by it, subject to its direction, may give counsel and advice to the parties and impose conditions for the conduct and control of the child with a view to an informal adjustment if it appears:
 - a. The admitted facts bring the case within the jurisdiction of the court;
 - b. Counsel, advice and conditions, if any, for the conduct and control of the child without an adjudication would be in the best interest of the public and the child; and

- c. The child and ~~his~~ the child's parents, guardian, or other custodian consent thereto with knowledge that consent is not obligatory.
2. The giving of counsel and advice and any conditions imposed for the conduct and control of the child cannot extend beyond nine months from the day commenced unless extended by the court for an additional period not to exceed six months and does not authorize the detention of the child if not otherwise permitted by this chapter. If the child admits to driving or being in actual physical control of a vehicle in violation of section 39-08-01 or an equivalent ordinance, the child may be required to pay a fine as a condition imposed under this section.
3. An incriminating statement made by a participant to the person giving counsel or advice and in the discussions or conferences incident thereto may not be used against the declarant over objection in any hearing except in a hearing on disposition in a juvenile court proceeding or in a criminal proceeding against him after conviction for the purpose of a presentence investigation.

SECTION 5. AMENDMENT. Section 27-20-17 of the North Dakota Century Code is amended and reenacted as follows:

27-20-17. Release from detention or shelter care - Hearing - Conditions of release.

1. If a child is brought before the court or delivered to a detention or shelter care facility designated by the court, the juvenile supervisor, the intake officer, or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that the child's detention or shelter care is warranted or required under section 27-20-14.
2. If the child is not released, a ~~petition under section 27-20-21 must be promptly made and presented to the court.~~ A judge or referee shall hold a detention or shelter care hearing promptly and not later than ninety-six hours after the child is placed in detention or shelter care to determine whether there is probable cause to believe the child has committed the delinquent or unruly acts alleged, or the child is deprived and whether the child's detention or shelter care is required under section 27-20-14. Reasonable notice thereof, either oral or written, stating the time, place, and purpose of the detention or shelter care hearing must be given to the child and, if they can be found, to the child's parents, guardian, or other custodian. ~~As a condition to the child's release from shelter care, the court may order a parent, guardian, custodian, or any other member of the household in which the child resides to vacate the child's residence if probable cause exists to believe that the parent, guardian, custodian, or other member of the household has committed a sexual offense with or against the child, pursuant to sections 12.1-20-03 through 12.1-20-07 or section 12.1-20-11, and the presence of the alleged sexual offender in the child's residence presents a danger to the child's life or physical, emotional, or mental health.~~ Prior to the commencement of the hearing, the court shall inform the parties of their right to counsel and to appointed counsel if they are needy persons, and of the child's right to remain silent with respect to any allegations of delinquency or unruly conduct.

3. If continued shelter care is required, the judge or referee may order that the child be kept in shelter care for no more than sixty days from the date of the shelter care hearing.
4. As a condition to the child's release from shelter care, the court may order a parent, guardian, custodian, or any other member of the household in which the child resides to vacate the child's residence if probable cause exists to believe that the parent, guardian, custodian, or other member of the household has committed a sexual offense with or against the child, pursuant to sections 12.1-20-03 through 12.1-20-07 or section 12.1-20-11, and the presence of the alleged sexual offender in the child's residence presents a danger to the child's life or physical, emotional, or mental health.
5. If the child is not released and a parent, guardian, or custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files an affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order the child's release, unless it appears from the hearing that the child's detention or shelter care is required under section 27-20-14.

SECTION 6. AMENDMENT. Subsection 2 of section 27-20-20.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, a petition for termination of parental rights must be filed:
 - a. If the child has been in foster care, in the custody of the department, or, in cases arising out of an adjudication by the court that a child is an unruly child, the division of juvenile services, for at least four hundred fifty out of the previous six hundred sixty nights;
 - b. Within sixty days after a court of competent jurisdiction has found the child to be an abandoned infant; or
 - c. Within sixty days after a court of competent jurisdiction has convicted the child's parent of one of the following crimes, or of an offense under the laws of another jurisdiction which requires proof of substantially similar elements:
 - (1) A violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03, or subdivision a of subsection 1 of section 14-09-22 in which the victim is another child of the parent;
 - (2) Aiding, abetting, attempting, conspiring, or soliciting a violation of section 12.1-16-01, 12.1-16-02, or 12.1-16-03 in which the victim is a child of the parent; or
 - (3) A violation of section 12.1-17-02 in which the victim is a child of the parent and has suffered serious bodily injury.

SECTION 7. AMENDMENT. Section 27-20-22 of the North Dakota Century Code is amended and reenacted as follows:

27-20-22. Summons.

1. After the petition has been filed, the court shall fix a time for hearing ~~thereon, which.~~ Except as otherwise provided in this subsection, the hearing may not be later than thirty days after the filing of the petition. If the child is in detention, the time for the initial hearing may not be later than fourteen days after the child has been taken into custody. If a child is in shelter care, the hearing on the petition must be held within sixty days of the initial shelter care hearing. The court may extend the time for hearing for good cause shown. The court shall direct the issuance of a summons to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons must also be directed to the child if he is fourteen or more years of age or is alleged to be a delinquent or unruly child. A copy of the petition must accompany the summons unless the summons is served by publication in which case the published summons must indicate the general nature of the allegations and where a copy of the petition can be obtained.
2. The court may endorse upon the summons an order directing the parents, guardian, or other custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.
3. If it appears from affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering ~~his~~ the child's health or welfare or those of others, or that ~~he~~ the child may abscond or be removed from the jurisdiction of the court or will not be brought before the court, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer shall serve the summons and take the child into immediate custody and bring ~~him forthwith~~ the child before the court.
4. The summons ~~shall~~ must state that a party is entitled to counsel in the proceedings and that the court will appoint counsel if the party is unable without undue financial hardship to employ counsel.
5. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, ~~his~~ the child's counsel, with the consent of the parent, guardian, or other custodian, or guardian ad litem, may waive service of summons in ~~his~~ the child's behalf.
6. When a child is in detention or shelter care and good cause is shown why service was not completed upon an absent or noncustodial parent, the court may proceed with the hearing on the petition in order to comply with any time limitations under this chapter.

SECTION 8. AMENDMENT. Section 27-20-25 of the North Dakota Century Code is amended and reenacted as follows:

27-20-25. Service by publication - Interlocutory order of disposition.

1. If service of summons upon a party is being or will be made by publication, the court may conduct a provisional hearing upon the allegations of the petition and enter an interlocutory order of disposition if:
 - a. The petition alleges delinquency, unruly conduct, or deprivation of the child;
 - b. The summons served upon any party (1) states that prior to the final hearing on the petition designated in the summons a provisional hearing thereon will be held at a specified time and place, (2) requires ~~the~~ any party who is served other than by publication to appear and answer the allegations of the petition at the provisional hearing, (3) states further that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing, and (4) otherwise conforms to section 27-20-22; and
 - c. ~~The~~ If the child is of sufficient age and understanding to comprehend the proceedings, the child must be personally before the court at the provisional hearing.
2. All provisions of this chapter applicable to a hearing on a petition, to orders of disposition, and to other proceedings dependent thereon apply under this section, but findings of fact and orders of disposition have only interlocutory effect pending the final hearing on the petition. The rights and duties of the party served, who is being served, or who will be served by publication are not affected except as provided in subsection 3.
3. If the party served by publication fails to appear at the final hearing on the petition, the findings of fact and interlocutory orders made become final without further evidence and are governed by this chapter as if made at the final hearing. If the party appears at the final hearing, the findings and orders must be vacated and disregarded and the hearing must proceed upon the allegations of the petition without regard to this section, unless otherwise agreed to by the party who had been served by publication.

SECTION 9. AMENDMENT. Section 27-20-31 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-31. Disposition of delinquent child. If the child is found to be a delinquent child, ~~or admits to a traffic-related offense in an informal adjustment hearing,~~ the court may make any of the following orders of disposition best suited to the child's treatment, rehabilitation, and welfare:

1. Any order authorized by section 27-20-30 for the disposition of a deprived child;
2. Placing the child on probation under the supervision of the juvenile supervisor, probation officer, or other appropriate officer of the court or of the court of another state as provided in section 27-20-41 or the

director of the county social service board under conditions and limitations the court prescribes;

3. Ordering the child to pay a fine if the delinquent act committed by the child constitutes manslaughter resulting from the operation of a motor vehicle in violation of section 12.1-16-02; negligent homicide in violation of section 12.1-16-03; or driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance. The court may suspend the imposition of a fine imposed pursuant to this subsection upon such terms and conditions as the court may determine. Fines collected pursuant to this subsection must be paid into the county treasury for disposition pursuant to section 29-27-02.1;
4. Placing the child in an institution, camp, or other facility for delinquent children operated under the direction of the court or other local public authority;
5. Committing the child to the division of juvenile services or to another state department to which commitment of delinquent or unruly children may be made. When necessary, the commitment order may provide that the child initially be placed in a secure facility;
6. Ordering the child to make monetary restitution to the victim of the offense or to complete a specified number of hours of community service as determined by the court, or both;
7. Ordering the periodic testing for the use of illicit drugs or alcohol pursuant to rules or policies adopted by the supreme court; or
8. Under section 27-20-31.1, order the driver's license or permit of the child to be delivered to the juvenile supervisor, probation officer, or other appropriate officer of the court and to inform the director of the department of transportation of the child's suspension of driving privileges and the duration of the suspension of privileges.

SECTION 10. AMENDMENT. Subsection 4 of section 27-20-32.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Reasonable efforts of the type described in subsection 2 are not required if:
 - a. A court of competent jurisdiction has determined that a parent has subjected ~~the~~ a child to aggravated circumstances; or
 - b. The parental rights of the parent, with respect to another child of the parent, have been involuntarily terminated.

SECTION 11. AMENDMENT. Subsections 2 and 4 of section 27-20-36 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. An order of disposition committing a delinquent or unruly child to the division of juvenile services continues in force for not more than two years, excluding any period of time the child is on parole from an institution, or until the child is sooner discharged by an institution.

- a. The court which made the order may extend its duration for additional two-year periods subject to like discharge, if:
 - (1) A hearing is held upon motion of the division, or on the court's own motion, prior to the expiration of the order;
 - (2) Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
 - (3) The court finds that the extension is necessary for the treatment or rehabilitation of the child.
 - b. A permanency hearing must be conducted within thirty days after a court determines that reasonable efforts aggravated circumstances of the type described in subdivisions a, c, d, or e of subsection 2 3 of section ~~27-20-32.2~~ are not required 27-20-02 exist, or within twelve months after a child, subject to an order of disposition under this subsection, is considered to have entered foster care, or is continued in foster care following a previous permanency hearing. The permanency hearing may be conducted:
 - (1) By the division of juvenile services as a placement hearing under chapter 27-21; or
 - (2) By the court, if the court requires, or if it appears that an appropriate permanency plan could not be carried out without exceeding the authority of the division of juvenile services.
4. Except as provided in subsection 1, the court may terminate an order of disposition before the expiration of the order or extend its duration for further periods. An order of extension may be made if:
- a. A hearing is held before the expiration of the order upon motion of a party or on the court's own motion;
 - b. Reasonable notice of the hearing and opportunity to be heard are given to the parties affected;
 - c. The court finds the extension is necessary to accomplish the purposes of the order extended; and
 - d. The extension does not exceed twelve months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order. ~~However, the court may order that the child permanently remain in foster care with a specified caregiver and that the duration of the order be left to the determination of the court if the court determines that:~~
 - ~~(1) All reasonable efforts have been made to reunite the child with the child's family;~~
 - ~~(2) The deprivation is likely to continue;~~

- (3) ~~With respect to a child under the age of ten, termination of parental rights and subsequent adoption would not be in the best interests of the child; and~~
- (4) ~~The placement of the child in permanent foster care is in the best interests of the child.~~

SECTION 12. AMENDMENT. Subsection 3 of section 27-20-47 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If the child is not placed for adoption within twelve months after the date of the order and a legal guardianship or other planned permanent living arrangement for the child has not been established by a court of competent jurisdiction, the child must be returned to the court issuing the original termination order for entry of further orders for the care, custody, and control of the child.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 289

SENATE BILL NO. 2220

(Senators Nething, Lyson)

JUVENILE CARE AND TREATMENT EXPENSES

AN ACT to amend and reenact subsection 2 of section 27-20-49 of the North Dakota Century Code, relating to costs and expenses of transporting juveniles for medical care and treatment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 27-20-49 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The supreme court shall pay reasonable compensation for services and related expenses of counsel appointed by the court for a party and reasonable compensation for a guardian ad litem. The attorney general shall pay the witness fees, mileage, and travel expense of witnesses incurred in the proceedings under this chapter in the amount and at the rate provided for in section 31-01-16. Expenses of the state include the cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be ~~borne~~ reimbursed to the county by that state agency at the state mileage rate, excluding meals and lodging, plus twenty-nine cents per mile.

Approved April 23, 2001

Filed April 23, 2001

CHAPTER 290

SENATE BILL NO. 2105

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

JUVENILE SERVICES RECORDS

AN ACT to create and enact a new section to chapter 27-21 of the North Dakota Century Code, relating to the files and records of the division of juvenile services; and to amend and reenact section 27-20-51.1 of the North Dakota Century Code, relating to disclosure of information needed to apprehend juveniles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-51.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-20-51.1. Disclosure of information needed to apprehend juvenile. Notwithstanding any other provision of law, the name, photographs, fingerprints, or other identifying information of a juvenile who is alleged to have committed a delinquent act involving actual or threat of serious bodily injury that would constitute a felony if committed by an adult or who has escaped or left without authorization from a secure facility may be released by law enforcement, the division of juvenile services, or the juvenile court for purposes of apprehending the juvenile.

SECTION 2. A new section to chapter 27-21 of the North Dakota Century Code is created and enacted as follows:

Division of juvenile services files and records confidentiality.

1. The files and records of the division of juvenile services relating to a juvenile committed to the division may not be disclosed directly or indirectly to any person, organization, or agency, except as provided in this section.
2. Notwithstanding any other provisions of law relating to confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, the division may disclose all or part of a juvenile's files and records, including juvenile court orders, medical, psychological, education, and treatment and counseling records, to individuals employed by the following if the knowledge is reasonably necessary in the best interest of the juvenile and for the protection of others:
 - a. The district court or juvenile court.
 - b. A parent or legal guardian of the juvenile, or their counsel, or the juvenile's counsel, when the juvenile court has committed the juvenile to the custody of the division of juvenile services, and the records are relevant to a proceeding under chapter 27-20 or to a placement hearing under section 27-21-02.1, or when disclosure is necessary for the juvenile's treatment and rehabilitation plan. If the

- juvenile court determines that it is against the best interests of the juvenile to disclose records to a parent or legal guardian, the juvenile court may issue an order prohibiting disclosure and describing the records that may not be disclosed.
- c. An employee or agent of any division of the department of corrections and rehabilitation when necessary to carry out the duties of the department.
 - d. The department of human services or a county social service agency.
 - e. A licensed hospital or medical facility, a public or private treatment facility, or a residential care or treatment facility, when necessary for the evaluation, treatment, or care of a juvenile in the custody of the division of juvenile services.
 - f. A law enforcement agency when the division has reasonable grounds to believe the juvenile has committed a delinquent act or has threatened to commit a delinquent act involving serious bodily injury, or when the juvenile is required to register, or is registered, under section 12.1-32-15.
 - g. A school district or multidistrict special education program in which the juvenile is enrolled.
 - h. The office of the attorney general.
 - i. The risk management division of the office of management and budget, and investigators, consultants, or experts retained by the state for the purpose of investigating and defending claims under chapter 32-12.2.
3. A person, agency, or institution receiving information or records under this section may not redisclose the information or records and shall maintain the confidentiality of the information or records.
 4. The division may disclose nonidentifying information for research and statistical purposes.
 5. The division may disclose the files and records of a juvenile under subdivision f or g of subsection 1 of section 27-20-51.
 6. The division shall disclose information to the extent necessary to comply with section 12.1-34-02.
 7. In all other cases, records and files of the division of juvenile services relating to a juvenile committed to its custody may only be open to inspection upon written leave of the juvenile court upon a showing in writing of a legitimate interest, but only to the extent necessary to respond to the legitimate interest.

JUDICIAL PROCEDURE, CIVIL

CHAPTER 291

SENATE BILL NO. 2196

(Senators Watne, Traynor)

(Representatives Kretschmar, Maragos)

GARNISHMENT EXECUTIONS

AN ACT to create and enact a new section to chapter 28-21 of the North Dakota Century Code, relating to execution on moneys retained by garnishment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-21 of the North Dakota Century Code is created and enacted as follows:

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 hundred seventy 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.

Approved March 28, 2001

Filed March 28, 2001

CHAPTER 292

HOUSE BILL NO. 1193 (Representative Klemin)

LEGAL FEES ASSESSMENT

AN ACT to amend and reenact section 28-26-06 of the North Dakota Century Code, relating to the assessment of legal fees following a judgment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-26-06 of the North Dakota Century Code is amended and reenacted as follows:

28-26-06. Disbursements taxed in judgment. In all actions and special proceedings, the clerk of district court shall tax as a part of the judgment in favor of the prevailing party ~~his~~ the following necessary disbursements ~~as follows~~:

1. The legal fees of witnesses; sheriffs; clerks of district court; the clerk of the supreme court, if ordered by the supreme court; process servers; and of referees and other officers;
2. The necessary expenses of taking depositions and of procuring evidence necessarily used or obtained for use on the trial;
3. The legal fees for publication, when publication is made pursuant to law;
4. The legal fees of the court reporter for a transcript of the testimony when such transcript is used on motion for a new trial or in preparing a statement of the case; and
5. The fees of expert witnesses. ~~Such~~ The fees must be reasonable fees as determined by the court, plus ~~his~~ actual ~~expense~~ expenses. The following are nevertheless in the sole discretion of the trial court:
 - a. The number of expert witnesses who are allowed fees or expenses;
 - b. The amount of fees to be paid such allowed expert witnesses, including an amount for time expended in preparation for trial; and
 - c. The amount of costs for actual expenses to be paid ~~such~~ the allowed expert witnesses.

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 293

HOUSE BILL NO. 1030

(Legislative Council)
(Administrative Rules Committee)

ADMINISTRATIVE AGENCIES PRACTICES

AN ACT to create and enact a new chapter 28-32 of the North Dakota Century Code, relating to administrative agencies practices; to amend and reenact section 4-18.1-19, subsection 1 of section 4-18.1-20, subsection 2 of section 4-18.1-21, subdivision a of subsection 1 of section 10-04-16.1, section 15-38.1-05, subdivision d of subsection 2 of section 19-03.1-33, sections 20.1-13.1-09, 20.1-15-09, 23-01-23, 23-20.2-04, 23-20.2-08, 28-32-18, 38-08-13, 38-08-14, 38-14.1-35, 39-06.2-10.7, and 39-20-06, subsection 8 of section 43-06-15, sections 43-07-15, 43-10-19, 43-11-32, 43-32-28.1, and 43-41-11, subsection 9 of section 50-01.2-06, subsection 9 of section 50-24.4-01.1, sections 54-03-24, 54-23.4-11, and 54-35-02.6, subsection 3 of section 54-57-01, subsection 1 of section 54-57-03, and sections 54-57-04, 57-57-10, and 61-04-06 of the North Dakota Century Code, relating to correction of statutory references to provisions in North Dakota Century Code chapter 28-32 and the authority of the administrative rules committee to suspend administrative rules; to repeal existing chapter 28-32 of the North Dakota Century Code, relating to administrative agencies practices; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-18.1-19 of the North Dakota Century Code is amended and reenacted as follows:

4-18.1-19. Judicial review of adjudicatory action by the board. Judicial review of any decision rendered by the board in any proceedings authorized or required by section 4-18.1-18 must be in accordance with sections ~~28-32-15~~ 28-32-42 through ~~28-32-24~~ 28-32-49.

SECTION 2. AMENDMENT. Subsection 1 of section 4-18.1-20 of the North Dakota Century Code is amended and reenacted as follows:

1. The rules of practice, regulations, and stabilization plans issued by the board are declared to be "rules ~~and regulations~~" as that ~~phrase word~~ is defined in chapter 28-32. The requirements of sections ~~28-32-02~~ through ~~28-32-04~~ 28-32-20 are applicable to any board proceeding which results in the adoption, amendment, or repeal of any rule of practice, regulation, or stabilization plan.

SECTION 3. AMENDMENT. Subsection 2 of section 4-18.1-21 of the North Dakota Century Code is amended and reenacted as follows:

2. Any such suit must be filed within thirty days after the date on which the action by the board becomes effective pursuant to section ~~28-32-03~~ 28-32-15.

¹⁴⁷ **SECTION 4. AMENDMENT.** Subdivision a of subsection 1 of section 10-04-16.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Make such public or private investigations within or outside of this state as the commissioner deems 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. Any investigation under this section may include an investigatory hearing ~~held in accordance with section 28-32-08.~~ 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.

SECTION 5. AMENDMENT. Section 15-38.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-38.1-05. Powers of the commission. The commission may adopt its own rules. In addition to other powers authorized by law and under this chapter, the members of the commission and any factfinder appointed by it have, in the performance of their duties, the powers contained in sections ~~28-32-09, 28-32-11, and 28-32-12~~ 28-32-33, 28-32-34, and 28-32-36.

SECTION 6. AMENDMENT. Subdivision d of subsection 2 of section 19-03.1-33 of the North Dakota Century Code is amended and reenacted as follows:

- d. This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with section ~~28-32-09~~ 28-32-33, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:
 - (1) If the owner, operator, or agent in charge of the controlled premises consents;
 - (2) In situations presenting imminent danger to health or safety;
 - (3) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;
 - (4) In any other exceptional emergency circumstances where time or opportunity to apply for a warrant is lacking; or
 - (5) In all other situations in which a warrant is not constitutionally required.

¹⁴⁷ Section 10-04-16.1 was also amended by section 13 of Senate Bill No. 2090, chapter 109.

SECTION 7. 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 ~~28-32-45~~ 28-32-42, by serving on the commissioner and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a chemical test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the commissioner and to the hearing officer who rendered the decision. Neither the commissioner nor the court may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice of appeal, the commissioner or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. This record is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the commissioner or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the commissioner or hearing officer. The court may direct that the matter be returned to the commissioner or hearing officer for rehearing and the presentation of additional evidence.

SECTION 8. 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 ~~28-32-45~~ 28-32-42, by serving on the commissioner and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a chemical test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the commissioner and to the hearing officer who rendered the decision. Neither the commissioner nor the court may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice of appeal, the commissioner or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. This record is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the commissioner or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the commissioner or hearing officer. The court may direct that the matter be returned to the commissioner or hearing officer for rehearing and the presentation of additional evidence.

SECTION 9. AMENDMENT. Section 23-01-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-01-23. Permit or investigatory hearings - Exemption from chapters 28-32 and 54-57. A permit hearing conducted for purposes of receiving public comment or an investigatory hearing conducted under chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, and 61-28.1 is not an adjudicative proceeding under chapter 28-32 and is not subject to the requirements of chapter 54-57.

SECTION 10. AMENDMENT. Section 23-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-04. Permit required - Denial of permit - Review. It is unlawful to commence any operations for the excavating, drilling, boring, or construction of an underground storage and retrieval facility; an underground waste disposal facility; or the conversion of any existing facility for use in any activity regulated by this chapter, without first securing a permit from the commission. A permit may not be issued until after notice and hearing, and payment of a fee for each permit in an amount to be prescribed by the commission, but not in excess of one thousand dollars. Each permit application must include:

1. A general discussion or description of the activity to be permitted.
2. A detailed description and discussion of the nature of the material to be stored, retrieved, or disposed of.
3. A detailed description and discussion of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility to be permitted.
5. A detailed discussion and description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility to be permitted.
6. A detailed description and discussion of a monitoring system to be used to ascertain the integrity of the facility, and to ensure compliance with the provisions of this chapter.
7. A detailed description and discussion of a reclamation program for the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activities regulated by this chapter.
8. Any other information required by the commission.

The commission may, following the hearing required herein, deny an application and refund the license fee. A person denied a permit may appeal such denial in accordance with the provisions of sections ~~28-32-15~~ 28-32-42 through ~~28-32-24~~ 28-32-49. All fees collected pursuant to this section, or penalties collected pursuant to section 23-20.2-06, must be deposited in the general fund in the state treasury. The permit required by this chapter is in addition to all other permits required by law.

SECTION 11. AMENDMENT. Section 23-20.2-08 of the North Dakota Century Code is amended and reenacted as follows:

23-20.2-08. Administrative procedure and judicial review. Any proceedings under this chapter for the issuance or modification of rules and regulations, including emergency orders relating to underground storage, retrieval, and waste disposal and determining compliance with rules and regulations of the commission, must be conducted in accordance with the provisions of chapter 28-32. When an emergency requiring immediate action is found to exist, the commission is authorized to issue an emergency order without notice or hearing, which is effective upon promulgation. No emergency order may remain effective for more than fifteen days. Any person aggrieved by action of the commission, or by its rules, regulations,

or orders, may appeal to the district court of the county in which the person resides, or in Burleigh County, in accordance with sections ~~28-32-15~~ 28-32-42 through ~~28-32-24~~ 28-32-49.

¹⁴⁸ **SECTION 12.** A new chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

28-32-01. (Effective through December 31, 2002) Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-22 or another specific statute or rule, unless the matter has been specifically converted to another type of proceeding under section 28-32-22. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.
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:

¹⁴⁸ Section 28-32-01 was amended by section 18 of Senate Bill No. 2032, chapter 488, section 4 of Senate Bill No. 2251, chapter 501, and section 2 of Senate Bill No. 2446, chapter 140, section 28-32-03 was amended by section 1 of House Bill No. 1028, chapter 294, section 28-32-11 was amended by section 2 of House Bill No. 1027, chapter 295, section 28-32-14 was amended by section 1 of House Bill No. 1455, chapter 296, section 28-32-15 was amended by section 2 of House Bill No. 1029, chapter 297, section 28-32-17 was amended by section 2 of House Bill No. 1455, chapter 296, section 28-32-18 was amended by section 2 of House Bill No. 1228, chapter 585, and section 4 of House Bill No. 1228, chapter 585, and section 28-32-19 was amended by section 3 of House Bill No. 1455, chapter 296.

- 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 state building code as authorized or required under section 54-21.3-03, rules relating to the model energy code as required under section 54-21.2-03, 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 economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational telecommunications council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, 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 16.1-11-02.2.
3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.
4. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-21 and any administrative agency that, when authorized by law, files such a complaint before such agency or any other agency.
5. "Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, an administrative law judge from the office of administrative hearings, or any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.
6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.
7. "Order" means any agency action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons. The term does not include an executive order issued by the governor.
8. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party. In a hearing for the suspension, revocation, or disqualification of an operator's license under title 39, the term may include each city and each county in which the alleged conduct occurred, but the city or county may not appeal the decision of the hearing officer.
9. "Person" includes an individual, association, partnership, corporation, limited liability company, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
10. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.
11. "Rule" means the whole or a part of an agency statement of general applicability which implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:

- a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
- b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
- c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
- d. A rule concerning only the physical servicing, maintenance, or care of agency-owned or agency-operated facilities or property.
- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, which is explanatory and not intended to have the force and effect of law.

(Effective January 1, 2003) Definitions. In this chapter, unless the context or subject matter otherwise provides:

- 1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named

respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-22 or another specific statute or rule, unless the matter has been specifically converted to another type of proceeding under section 28-32-22. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.

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 state building code as authorized or required under section 54-21.3-03, rules relating to the model energy code as required under section 54-21.2-03, 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 economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational telecommunications council.
 - i. The board of equalization.
 - j. The board of higher education.

- k. The Indian affairs commission.
 - l. The industrial commission with respect to the activities of the Bank of North Dakota, 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.
3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.
4. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-21 and any administrative agency that, when authorized by law, files such a complaint before such agency or any other agency.
5. "Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, an administrative law judge from the office of administrative hearings, or any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.
6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.

7. "Order" means any agency action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons. The term does not include an executive order issued by the governor.
8. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party. In a hearing for the suspension, revocation, or disqualification of an operator's license under title 39, the term may include each city and each county in which the alleged conduct occurred, but the city or county may not appeal the decision of the hearing officer.
9. "Person" includes an individual, association, partnership, corporation, limited liability company, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
10. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.
11. "Rule" means the whole or a part of an agency statement of general applicability which implements or prescribes law or policy or the organization, procedure, or practice requirements of the agency. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:

 - a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
 - b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:

 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
 - c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
 - d. A rule concerning only the physical servicing, maintenance, or care of agency-owned or agency-operated facilities or property.
 - e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.

- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, which is explanatory and not intended to have the force and effect of law.

28-32-02. Rulemaking power of agency - Organizational rule.

1. The authority of an administrative agency to adopt administrative rules is authority delegated by the legislative assembly. As part of that delegation, the legislative assembly reserves to itself the authority to determine when and if rules of administrative agencies are effective. Every administrative agency may adopt, amend, or repeal reasonable rules in conformity with this chapter and any statute administered or enforced by the agency.
2. In addition to other rulemaking requirements imposed by law, each agency shall include in its rules a description of that portion of its organization and functions subject to this chapter, stating the general course and method of its operations and how the public may obtain information or make submissions or requests.

28-32-03. Emergency rules. If the agency finds that emergency rulemaking is necessary because of imminent peril to the public health, safety, or welfare, because a delay in rulemaking is likely to cause a loss of revenues appropriated to support a duty imposed by law upon the agency, or because reasonably necessary to avoid a delay in implementing an appropriations measure, the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule. The agency's finding, and a brief statement of the agency's reasons for the finding, must be filed with the office of the legislative council, with the final adopted emergency rule. The agency shall take appropriate measures to make interim final rules known to every person who may be affected by them. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

28-32-04. Repeal or waiver of rules from federal guidelines.

1. An agency shall repeal or amend any existing rule that was adopted from federal guidelines and which is not relevant to state regulatory programs.
2. An agency may not adopt rules from federal guidelines which are not relevant to state regulatory programs when developing or modifying programs.
3. An agency shall seek a waiver from the appropriate United States agency when the United States agency is evaluating current programs or delegating or modifying programs, to relieve the agency from complying with or adopting rules that are not relevant to state regulatory programs.

28-32-05. Adoption by reference of certain rules.

1. When adopting rules, an agency shall adopt by reference any applicable existing permit or procedural rules that may be adapted for use in a new or existing program.
2. An agency shall seek authorization from the appropriate United States agency to adopt by reference applicable existing permit or procedural rules that may be adapted for use in a new or existing program when the United States agency is delegating or modifying a program.

28-32-06. Force and effect of rules. Upon becoming effective, rules have the force and effect of law until amended or repealed by the agency, declared invalid by a final court decision, suspended or found to be void by the administrative rules committee, or determined repealed by the office of the legislative council because the authority for adoption of the rules is repealed or transferred to another agency.

28-32-07. Deadline for rules to implement statutory change. Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the office of the legislative council within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own.

28-32-08. Regulatory analysis.

1. An agency shall issue a regulatory analysis of a proposed rule if:
 - a. Within twenty days after the last published notice date of a proposed rule hearing, a written request for the analysis is filed by the governor or a member of the legislative assembly; or
 - b. The proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars. The analysis under this subdivision must be available on or before the first date of public notice as provided for in section 28-32-10.
2. The regulatory analysis must contain:

- a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - b. A description of the probable impact, including economic impact, of the proposed rule;
 - c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
 - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.
3. Each regulatory analysis must include quantification of the data to the extent practicable.
 4. The agency shall mail or deliver a copy of the regulatory analysis to any person who requests a copy of the regulatory analysis. The agency may charge for the actual cost of providing copies of the regulatory analysis.
 5. If required under subsection 1, the preparation and issuance of a regulatory analysis is a mandatory duty of the agency proposing a rule. Errors in a regulatory analysis, including erroneous determinations concerning the impact of the proposed rule on the regulated community, are not a ground upon which the invalidity of a rule may be asserted or declared.

28-32-09. Takings assessment.

1. An agency shall prepare a written assessment of the constitutional takings implications of a proposed rule that may limit the use of private real property. The agency's assessment must:
 - a. Assess the likelihood that the proposed rule may result in a taking or regulatory taking.
 - b. Clearly and specifically identify the purpose of the proposed rule.
 - c. Explain why the proposed rule is necessary to substantially advance that purpose and why no alternative action is available that would achieve the agency's goals while reducing the impact on private property owners.
 - d. Estimate the potential cost to the government if a court determines that the proposed rule constitutes a taking or regulatory taking.
 - e. Identify the source of payment within the agency's budget for any compensation that may be ordered.
 - f. Certify that the benefits of the proposed rule exceed the estimated compensation costs.

2. Any private landowner who is or may be affected by a rule that limits the use of the landowner's private real property may request in writing that the agency reconsider the application or need for the rule. Within thirty days of receiving the request, the agency shall consider the request and shall in writing inform the landowner whether the agency intends to keep the rule in place, modify application of the rule, or repeal the rule.
3. In an agency's analysis of the takings implications of a proposed rule, "taking" means the taking of private real property, as defined in section 47-01-03, by government action which requires compensation to the owner of that property by the fifth or fourteenth amendment to the Constitution of the United States or section 16 of article I of the Constitution of North Dakota. "Regulatory taking" means a taking of real property through the exercise of the police and regulatory powers of the state which reduces the value of the real property by more than fifty percent. However, the exercise of a police or regulatory power does not effect a taking if it substantially advances legitimate state interests, does not deny an owner economically viable use of the owner's land, or is in accordance with applicable state or federal law.

28-32-10. Notice of rulemaking - Hearing date.

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 concerning the proposed rule may be sent, 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 telephone number to use to obtain a copy of the proposed rules or to submit written comments and the location, date, and time of the public hearing on the rules.
2. The agency shall mail a copy of the agency's full notice to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the

agency's full notice to any person who is likely to be an interested person. The agency shall mail or deliver a copy of the rules to any person requesting a copy. The agency may charge for the actual cost of providing copies of the proposed rule.

3. In addition to the other notice requirements of this subsection, the superintendent of public instruction shall provide notice of any proposed rulemaking by the superintendent of public instruction to each association with statewide membership whose primary focus is elementary and secondary education issues which has requested to receive notice from the superintendent under this subsection and to the superintendent of each public school district in this state, or the president of the school board for school districts that have no superintendent, at least thirty days before the date of the hearing described in the notice. Notice provided by the superintendent of public instruction under this section must be by first-class mail. However, upon request of a group or person entitled to notice under this section, the superintendent of public instruction shall provide the group or person notice by electronic mail.
4. The legislative council shall establish standard procedures for all agencies to follow in complying with the provisions of this section and a procedure to allow any person to request and receive mailed copies of all filings made by agencies pursuant to this section. The legislative council may charge an annual fee as established by the administrative rules committee for providing copies of the filings.
5. At least thirty days must elapse between the later of the date of the publication of the notice or the date the legislative council mails copies of an agency's notice and the date of the hearing. The thirty-day period begins on the first business day of the month in which the notices must be mailed or on the date of the publication, whichever is later. Subject to subsection 4, notices filed on or before the last calendar day of the preceding month must be mailed by the legislative council on the first business day of the following month to any person making a request.

28-32-11. Conduct of hearings - Consideration and written record of comments. The agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. In case of substantive rules, the agency shall conduct an oral hearing. The agency shall consider fully all written and oral submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.

28-32-12. Comment period. The agency shall allow, after the conclusion of any rulemaking hearing, a comment period of at least thirty days during which data, views, or arguments concerning the proposed rulemaking will be received by the agency and made a part of the rulemaking record to be considered by the agency.

28-32-13. Substantial compliance with rulemaking procedure. A rule is invalid unless adopted in substantial compliance with this chapter. However, inadvertent failure to supply any person with a notice required by section 28-32-10 does not invalidate a rule. Notwithstanding subsection 2 of section 28-32-42, an

action to contest the validity of a rule on the grounds of noncompliance with this chapter may not be commenced more than two years after the effective date of the rule.

28-32-14. Attorney general review of rules. Every rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general promptly shall furnish each such opinion. The attorney general may not approve any rule as to legality when the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable or when the procedural requirements for adoption of the rule in this chapter are not substantially met. The attorney general shall advise an agency of any revision or rewording of a rule necessary to correct objections as to legality.

28-32-15. Filing of rules for publication - Effective date of rules.

1. A copy of each rule adopted by an administrative agency, and the attorney general's opinion thereon, must be filed by the adopting agency with the office of the legislative council for publication in the North Dakota Administrative Code.
2. Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council become effective the first day of the month after the month of publication as provided for in section 28-32-19, except that if a later date is required by statute, specified in the rule, or provided under section 28-32-18, the later date is the effective date. A rule found to be void by the administrative rules committee is void from the time provided under section 28-32-18. If publication is delayed due to technological problems or lack of funds, nonemergency rules, unless otherwise provided, become effective on the first day of the month after the month publication would have occurred but for the delay.

28-32-16. Petition for reconsideration of rule - Hearing by agency. Any person substantially interested in the effect of a rule adopted by an administrative agency may petition such agency for a reconsideration of any such rule or for an amendment or repeal thereof. Such petition must state clearly and concisely the petitioners' alleged grounds for such reconsideration or for the proposed repeal or amendment of such rule. The agency may grant the petitioner a public hearing upon such terms and conditions as the agency may prescribe.

28-32-17. Administrative rules committee objection. If the legislative council's administrative rules committee objects to all or any portion of a rule because the committee deems it to be unreasonable, arbitrary, capricious, or beyond the authority delegated to the adopting agency, the committee may file that objection in certified form in the office of the legislative council. The filed objection must contain a concise statement of the committee's reasons for its action.

1. The office of the legislative council shall attach to each objection a certification of the time and date of its filing and, as soon as possible, shall transmit a copy of the objection and the certification to the agency adopting the rule in question. The office of the legislative council shall also maintain a permanent register of all committee objections.
2. The office of the legislative council shall publish an objection filed pursuant to this section in the next issue of the code supplement. In

case of a filed committee objection to a rule subject to the exceptions of the definition of rule in section 28-32-01, the agency shall indicate the existence of that objection adjacent to the rule in any compilation containing that rule.

3. Within fourteen days after the filing of a committee objection to a rule, the adopting agency shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.
4. After the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment must be rendered against the agency for court costs. These court costs must include a reasonable attorney's fee and must be payable from the appropriation of the agency which adopted the rule in question.

28-32-18. Administrative rules committee may void rule - Grounds - Amendment by agreement of agency and committee.

1. The legislative council's administrative rules committee may find that all or any portion of a rule is void if that rule is initially considered by the committee within ninety days after the date of the administrative code supplement in which the rule change appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that rule is initially considered by the committee at the first meeting of the administrative rules committee following the regular session of the legislative assembly. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
 - a. An absence of statutory authority.
 - b. An emergency relating to public health, safety, or welfare.
 - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
 - d. A conflict with state law.
 - e. Arbitrariness and capriciousness.
 - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.
2. The administrative rules committee may find a rule void at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. Within three business days after the administrative rules committee finds that a rule is void, the office of the legislative council shall provide written notice of

that finding and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative council. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative council for review by the legislative council of the decision of the administrative rules committee. If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the office of the legislative council to the adopting agency. If within sixty days after receipt of the petition from the adopting agency the legislative council has not disapproved by motion the finding of the administrative rules committee, the rule is void.

3. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be resubmitted by the agency to the legislative council for publication as amended, repealed, or created and reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.

28-32-19. Publication of administrative code and code supplement.

1. The office of the legislative council shall compile, index, and publish all rules filed pursuant to this chapter in a publication which must be known as the North Dakota Administrative Code, in this chapter referred to as the code. The code must also contain all objections filed with the office of the legislative council by the administrative rules committee pursuant to section 28-32-17. The code must be printed or otherwise duplicated in looseleaf form. The office of the legislative council shall revise all or part of the code as often as the legislative council deems necessary.
2. The office of the legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which must be open to public inspection during office hours.
3. The office of the legislative council shall compile and publish the North Dakota Administrative Code supplement, in this chapter referred to as the code supplement, the month after the month that rules are submitted to the office of the legislative council for publication unless technological problems or lack of funds prevent the publication at that time. Any delayed supplements must be published as soon as the technological problems are resolved or the necessary funds are available.
 - a. The code supplement must contain all rules filed with the office of the legislative council since the compilation and publication of the preceding issue of the code supplement. The office of the

- j. Secretary of state, one copy.
 - k. Legislative council, four copies.
 - l. Each member of the legislative assembly, one copy, upon request.
2. The office of the legislative council, each county auditor in the state, and the librarians for the supreme court library, the state library, the university of North Dakota law library, and the five depository libraries as designated according to subsection 1 and section 54-24-09 shall maintain a complete, current set of the code, including revisions and the code supplement.
3. The secretary of state shall make copies of and subscriptions to the code and code supplement available to any person upon payment of the appropriate subscription fee.
4. The office of the legislative council shall determine the appropriate fee for subscribing to the code and code supplement.
5. All fees collected by the secretary of state must be deposited in the general fund of the state treasury.
6. The administrative code, revisions to the administrative code, and the code supplement must be considered sixth-class printing under sections 46-02-04 and 46-02-09.

28-32-21. Adjudicative proceedings - Procedures. Administrative agencies shall comply with the following procedures in all adjudicative proceedings:

1. a. For adjudicative proceedings involving a hearing on a complaint against a specific-named respondent, a complainant shall prepare and file a clear and concise complaint with the agency having subject matter jurisdiction of the proceeding. The complaint shall contain a concise statement of the claims or charges upon which the complainant relies including reference to the statute or rule alleged to be violated, and the relief sought.
 - b. After a complaint is filed, the appropriate administrative agency shall serve a copy of the complaint upon the respondent in the manner allowed for the service of process under the North Dakota Rules of Civil Procedure at least forty-five days before the hearing on the complaint.
 - c. The administrative agency shall designate the time and place for the hearing and shall serve a copy of the notice of hearing upon the respondent in the manner allowed for service under the North Dakota Rules of Civil Procedure, at least twenty days before the hearing on the complaint. Service of the notice of hearing may be waived in writing by the respondent, or the parties may agree on a definite time and place for hearing with the consent of the agency having jurisdiction.
 - d. A complaint may be served less than forty-five days before the time specified for a hearing on the complaint and a notice of hearing on a complaint may be served less than twenty days before the time

- specified for hearing if otherwise authorized by statute. However, an administrative hearing regarding the renewal, suspension, or revocation of a license may not be held fewer than ten days after the licensee has been served, personally or by certified mail, with a copy of a notice for hearing with an affidavit, complaint, specification of issues, or other document alleging violations upon which the license hearing is based.
- e. A complaint may inform the respondent that an answer to the complaint must be served upon the complainant and the agency with which the complaint is filed within twenty days after service of the complaint, or the agency may deem the complaint to be admitted. If the respondent fails to answer as required within twenty days after service of the complaint, the agency may enter an order in default as the facts and law may warrant. Answers must be served in the manner allowed for service under the North Dakota Rules of Civil Procedure.
 - f. Service is complete upon compliance with the provisions of the North Dakota Rules of Civil Procedure. Proof of service may be made as provided in the North Dakota Rules of Civil Procedure.
 - g. A respondent may be given less than twenty days to answer the complaint, pursuant to another statute, but no respondent may be required to answer a complaint in less than five days and an answer must be served on the complainant and the agency with which the complaint is filed at least two days before the hearing on the complaint.
 - h. Amended and supplemental pleadings may be served and filed with the agency in the manner allowed for amended and supplemental pleadings under the North Dakota Rules of Civil Procedure.
2. At any hearing in an adjudicative proceeding, the parties shall be afforded opportunity to present evidence and to examine and cross-examine witnesses as is permitted under sections 28-32-24 and 28-32-35.
 3.
 - a. If the adjudicative proceeding does not involve a hearing on a complaint against a specific-named respondent, the provisions of subsection 1 do not apply. Unless otherwise provided by law, the provisions of subdivisions b through d apply.
 - b. The administrative agency shall designate the time and place for the hearing and shall serve a copy of the notice of hearing upon all the parties in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing. Service of the notice of hearing may be waived in writing by the parties, or the parties may agree on a definite time and place for the hearing with the consent of the agency having jurisdiction.
 - c. A hearing under this subsection may not be held unless the parties have been properly served with a copy of the notice of hearing as well as a written specification of issues for hearing or other

document indicating the issues to be considered and determined at the hearing. In lieu of, or in addition to, a specification of issues or other document, an explanation about the nature of the hearing and the issues to be considered and determined at the hearing may be contained in the notice.

- d. Service is complete upon compliance with the provisions of the North Dakota Rules of Civil Procedure. Proof of service may be made as provided in the North Dakota Rules of Civil Procedure.

28-32-22. Informal disposition. Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval. Any administrative agency may adopt rules of practice or procedure for informal disposition if such rules do not substantially prejudice the rights of any party. Such rules may establish procedures for converting an administrative matter from one type of proceeding to another type of proceeding.

28-32-23. Adjudicative proceedings - Exceptions - Rules of procedure. Notwithstanding the requirements for standardization of procedures in adjudicative proceedings under this chapter, an administrative agency may adopt specific agency rules of procedure not inconsistent with this chapter. An administrative agency may also adopt specific agency rules of procedure when necessary to comply with requirements found elsewhere in this code or when necessary to comply with the requirements of federal statutes, rules, or standards.

28-32-24. Evidence to be considered by agency - Official notice.

1. The admissibility of evidence in any adjudicative proceeding before an administrative agency shall be determined in accordance with the North Dakota Rules of Evidence. An administrative agency, or any person conducting proceedings for it, may waive application of the North Dakota Rules of Evidence if a waiver is necessary to ascertain the substantial rights of a party to the proceeding, but only relevant evidence shall be admitted. The waiver must be specifically stated, orally or in writing, either prior to or at a hearing or other proceeding.
2. All objections offered to evidence shall be noted in the record of the proceeding. No information or evidence except that which has been offered, admitted, and made a part of the official record of the proceeding shall be considered by the administrative agency, except as otherwise provided in this chapter.
3. Upon proper objection, evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege recognized in the courts of this state, may be excluded. In the absence of proper objection, the agency, or any person conducting a proceeding for it, may exclude objectionable evidence.
4. The North Dakota Rules of Evidence in regard to privileges apply at all stages of an administrative proceeding under this chapter.
5. All testimony must be made under oath or affirmation. Relevant statements presented by nonparties may be received as evidence if all

parties are given an opportunity to cross-examine the nonparty witness or to otherwise challenge or rebut the statements. Nonparties may not examine or cross-examine witnesses except pursuant to a grant of intervention.

6. Evidence may be received in written form if doing so will expedite the proceeding without substantial prejudice to the interests of any party.
7. Official notice may be taken of any facts that could be judicially noticed in the courts of this state. Additionally, official notice may be taken of any facts as authorized in agency rules.

28-32-25. Adjudicative proceedings - Consideration of information not presented at a hearing. In any adjudicative proceeding, an administrative agency may avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by the agency, in addition to the evidence presented at the hearing. It may do so after first transmitting a copy of the information or evidence or an abstract thereof to each party of record in the proceeding. The agency must afford each party, upon written request, an opportunity to examine the information or evidence and to present its own information or evidence and to cross-examine the person furnishing the information or evidence. Any further testimony that is necessary shall be taken at a hearing to be called and held, giving at least ten days' notice. Notice must be served upon the parties in the manner allowed for service under the North Dakota Rules of Civil Procedure. This section also applies to information officially noticed after the hearing when the issuance of any initial or final order is based in whole or in part on the facts or material noticed.

28-32-26. Costs of investigation. An agency may assess the costs of an investigation to a person found to be in violation of a statute or rule as a result of an adjudicative proceeding or informal disposition. The total costs assessed and any civil penalty that may be imposed as a result of violation may not exceed the statutorily authorized civil penalty for the violation. For the purposes of this section, costs mean reasonable out-of-pocket agency costs, not including any attorney's fees, actually incurred in conducting the investigation for which they may be assessed. Any such costs paid must be paid into the general fund and are appropriated as a refund to the agency for the purposes of defraying the costs of undertaking the investigation.

28-32-27. Hearing officer - Disqualification - Substitution.

1. Any person or persons presiding for the agency in an administrative proceeding must be referred to individually or collectively as hearing officer. Any person from the office of administrative hearings presiding for the agency as a hearing officer in an administrative proceeding must be referred to as an administrative law judge.
2. Any hearing officer is subject to disqualification for good cause shown.
3. Any party may petition for the disqualification of any person presiding as a hearing officer upon discovering facts establishing grounds for disqualification.
4. A person whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

5. If a substitute is required for a person who is disqualified or becomes unavailable for any other reason, the substitute may be appointed by:
 - a. The attorney general, if the disqualified or unavailable person is an assistant attorney general;
 - b. The agency head, if the disqualified or unavailable person is one or more members of the agency head or one or more other persons designated by the agency head;
 - c. A supervising hearings officer, if the disqualified or unavailable person is a hearing officer designated from an office, pool, panel, or division of hearings officers; or
 - d. The governor, in all other cases.
6. Any action taken by a duly appointed substitute for a disqualified or unavailable person is as effective as if taken by the disqualified or unavailable person.
7. Any hearing officer in an administrative proceeding, from the time of appointment or designation, may exercise any authority granted by law or rule. A hearing officer may be designated to preside over the entire administrative proceeding and may issue orders accordingly. A procedural hearing officer may only issue orders in regard to the course and conduct of the hearing under statute or rule and to otherwise effect an orderly hearing. If a procedural hearing officer is designated, the agency head must be present at the hearing and the agency head shall issue findings of fact and conclusions of law, as well as any order resulting from the hearing.

28-32-28. Intervention. An administrative agency may grant intervention in an adjudicative proceeding to promote the interests of justice if intervention will not impair the orderly and prompt conduct of the proceeding and if the petitioning intervenor demonstrates that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of statute or rule. The agency may impose conditions and limitations upon intervention. The agency shall give reasonable notice of the intervention to all parties. An administrative agency may adopt rules relating to intervention in an adjudicative proceeding.

28-32-29. Prehearing conference. Before a hearing, an administrative agency may conduct a prehearing conference after giving reasonable notice to all parties and other interested persons. A prehearing conference may be conducted in total or in part by making use of telephone, fax services, television, or other electronic means, as long as such use does not substantially prejudice or infringe on the rights and interests of any party. An administrative agency may adopt rules regarding the availability of, notice of, and procedures for prehearing conferences.

28-32-30. Default.

1. If a party fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding, the agency may enter and serve upon all parties written notice of default and a default order, including a statement of the grounds for default.

2. Within seven days after service of the default notice, order, and grounds, the party against whom default was ordered may file a written motion requesting that the default order be vacated and stating the grounds relied upon. During the time within which a party may file a written motion under this section, or at the time of issuing notice and the default order, the agency may adjourn the proceedings or conduct them without the participation of the party against whom a default order was issued, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. If an agency conducts further proceedings necessary to complete the administrative action without the participation of a party in default, it shall determine all the issues involved, including those affecting the defaulting party.

28-32-31. Duties of hearing officers. All hearing officers shall:

1. Assure that proper notice has been given as required by law.
2. Conduct only hearings and related proceedings for which proper notice has been given.
3. Assure that all hearings and related proceedings are conducted in a fair and impartial manner.
4. Make recommended findings of fact and conclusions of law and issue a recommended order, when appropriate.
5. Conduct the hearing only and perform such other functions of the proceeding as requested, when an agency requests a hearing officer to preside only as a procedural hearing officer. If the hearing officer is presiding only as a procedural hearing officer, the agency head must be present at the hearing and the agency head shall make findings of fact and conclusions of law and issue a final order. The agency shall give proper notice as required by law. The procedural hearing officer may issue orders in regard to the conduct of the hearing pursuant to statute or rule and to otherwise effect an orderly and prompt disposition of the proceedings.
6. Make findings of fact and conclusions of law and issue a final order, if required by statute or requested by an agency.
7. Function only as a procedural hearing officer, when an agency requests a hearing officer to preside for a rulemaking hearing. The agency head need not be present. The agency shall give proper notice as required by law.
8. Perform any and all other functions required by law, assigned by the director of administrative hearings, or delegated to the hearing officer by the agency.

28-32-32. Emergency adjudicative proceedings. An administrative agency may use an emergency adjudicative proceeding, in its discretion, in an emergency situation involving imminent peril to the public health, safety, or welfare.

1. In an emergency, the administrative agency may take action pursuant to a specific statute as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare.

2. In an emergency, in the absence of a specific statute, an administrative agency may serve a complaint fewer than forty-five days before the hearing and give notice of a hearing on the complaint by giving less than twenty days' notice as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare. But, every party to the emergency adjudicative proceeding must be given a reasonable time within which to serve an answer and to prepare for the hearing, which may be extended by the agency upon good cause being shown.
3. In an emergency, in the absence of a specific statute, in an adjudicative proceeding that does not involve a complaint against a specific-named respondent, an administrative agency may give notice of a hearing by giving less than twenty days' notice as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare. But, every party to the emergency adjudicative proceeding shall be given a reasonable time to prepare for the hearing, which may be extended by the agency upon good cause being shown.
4. As a result of the emergency adjudicative proceeding, in the absence of a specific statute requiring other administrative action, the administrative agency shall issue an order. The order must include a brief statement of the reasons justifying the determination of imminent peril to the public health, safety, or welfare and requiring an emergency adjudicative proceeding to prevent or avoid the imminent peril.
5. After issuing an order pursuant to this section, the administrative agency shall proceed as soon as possible to complete any other proceedings related to the emergency adjudicative proceeding that do not involve imminent peril to the public health, safety, or welfare.

28-32-33. Adjudicative proceedings - Subpoenas - Discovery - Protective orders.

1. In an adjudicative proceeding, discovery may be obtained in accordance with the North Dakota Rules of Civil Procedure.
2. In an adjudicative proceeding, a party must first show good cause, by written petition, and get the written approval of the hearing officer, before obtaining discovery from an administrative agency. Before obtaining discovery from an administrative agency by means of a request for the production of documents that are public records, the requesting party must have first made a diligent and good-faith effort to review the documents under existing general law procedures for the inspection of public records and access must have been denied.
3. In any adjudicative proceeding, upon the request or motion of any party to the proceeding or upon the hearing officer's own motion on behalf of the agency, a hearing officer may issue subpoenas, discovery orders, and protective orders in accordance with the North Dakota Rules of Civil Procedure. A motion to quash or modify, or any other motion relating to subpoenas, discovery, or protective orders must be made to the hearing officer. The hearing officer's rulings on these motions may be appealed under section 28-32-42 after issuance of the final order by the agency. The cost of issuing and serving a subpoena in any adjudicative proceeding must be paid by the person or agency requesting it.

4. Any witness who is subpoenaed under the provisions of this section and who appears at a hearing or other part of an adjudicative proceeding, or whose deposition is taken, shall receive the same fees and mileage as a witness in a civil case in the district court. Witness fees and mileage shall be paid by the party or agency at whose instance the witness appears. Any hearing officer may order the payment of witness fees or mileage by the appropriate party or agency.
5. Subpoenas, discovery orders, protective orders, and other orders issued under this section may be enforced by applying to any judge of the district court for an order requiring the attendance of a witness, the production of all documents and objects described in the subpoena, or otherwise enforcing an order. Failure of a witness or other person to comply with the order of the district court is contempt of court which is punishable by the district court, upon application. The judge may award attorney's fees to the prevailing party in an application under this subsection.

28-32-34. Administration of oaths - Parties to be advised of perjury provisions. Any hearing officer in an administrative proceeding has the power to examine witnesses and records and to administer oaths to witnesses. At the time the person presiding administers the oath to a witness, the person shall advise the witness of the provisions of subsection 1 of section 12.1-11-01 and of the maximum penalty for perjury.

28-32-35. Procedure at hearing. The person presiding at a hearing shall regulate the course of the hearing in conformity with this chapter and any rules adopted under this chapter by an administrative agency, any other applicable laws, and any prehearing order. To the extent necessary for full disclosure of all relevant facts and issues, the person presiding at the hearing shall afford to all parties and other persons allowed to participate the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted or conditioned by a grant of intervention or by a prehearing order. A hearing may be conducted in total or in part by making use of telephone, television, fax services, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if practicable, to see the entire proceeding while it is taking place, and if such use does not substantially prejudice or infringe on the rights and interests of any party.

28-32-36. Agency to make record. An administrative agency shall make a record of all testimony, written statements, documents, exhibits, and other evidence presented at any adjudicative proceeding or other administrative proceeding heard by it. Oral testimony may be taken by a court reporter, by a stenographer, or by use of an electronic recording device. All evidence presented at any proceeding before the administrative agency shall be filed with the agency. A copy of the record of any proceeding before an administrative agency, or a part thereof, must be furnished to any party to the proceeding and to any other person allowed to participate in the proceeding, upon written request submitted to the agency and upon payment of a uniform charge to be set by the agency. Any fee paid to an administrative agency for the record, or a part thereof, shall be paid into the general fund and is appropriated as a refund to the agency for the purposes of defraying the costs of preparing the record. An agency may contract with any person or another agency to prepare a record, or a part thereof, of any proceeding before the agency.

28-32-37. Ex parte communications.

1. Except as provided in subsections 2 and 4 or unless required for the disposition of ex parte matters specifically authorized by another statute, an agency head or hearing officer in an adjudicative proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any party, with any person who has a direct or indirect interest in the outcome of the proceeding, with any other person allowed to participate in the proceeding, or with any person who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.
2. When more than one person is the hearing officer in an adjudicative proceeding, those persons may communicate with each other regarding a matter pending before the panel. An agency head or hearing officer may communicate with or receive aid from staff assistants if the assistants do not furnish, augment, diminish, or modify the evidence in the record.
3. Except as provided in subsection 4 or unless required for the disposition of ex parte matters specifically authorized by statute, no party to an adjudicative proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, no person allowed to participate in the proceeding, and no person who presided at a previous stage in the proceeding may communicate directly or indirectly in connection with any issue in that proceeding, while the proceeding is pending, with any agency head or hearing officer in the proceeding without notice and opportunity for all parties to participate in the communication.
4. In an adjudicative proceeding conducted by a hearing officer other than the agency head, counsel for the administrative agency and the agency head, without notice and opportunity for all parties to participate, may communicate and consult regarding the status of the adjudicative proceeding, discovery, settlement, litigation decisions, and other matters commonly communicated between attorney and client, to permit the agency head to make informed decisions. This subsection does not apply after recommended findings of fact, conclusions of law, and orders have been issued, except counsel for the administrative agency and the agency head may communicate regarding settlement and negotiation after recommended findings of fact, conclusions of law, and orders have been issued.
5. If, before being assigned, designated, or appointed to preside in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while presiding, the person, promptly after being assigned, designated, or appointed, shall disclose the communication in the manner prescribed in subsection 6.
6. An agency head or hearing officer in an adjudicative proceeding who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, or a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte oral communication, and shall advise all parties, interested persons, and other persons allowed to participate that these matters have been placed on the record. Any

person desiring to rebut the ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal. A request for rebuttal must be made within ten days after notice of the communication.

7. If necessary to eliminate the effect of an ex parte communication received in violation of this section, an agency head or hearing officer in an adjudicative proceeding who receives the communication may be disqualified, upon good cause being shown in writing to the hearing officer or to the agency. The portions of the record pertaining to the communication may be sealed by protective order issued by the agency.
8. The agency shall, and any party may, report any willful violation of this section to the appropriate authorities for any disciplinary proceedings provided by law. In addition, an administrative agency may, by rule, provide for appropriate sanctions, including default, for any violations of this section.
9. Nothing in this section prohibits a member of the general public, not acting on behalf or at the request of any party, from communicating with an agency in cases of general interest. The agency shall disclose such written communications in adjudicative proceedings.

28-32-38. Separation of functions.

1. No person who has served as investigator, prosecutor, or advocate in the investigatory or prehearing stage of an adjudicative proceeding may serve as hearing officer.
2. No person who is subject to the direct authority of one who has served as an investigator, prosecutor, or advocate in the investigatory or prehearing stage of an adjudicative proceeding may serve as hearing officer.
3. Any other person may serve as hearing officer in an adjudicative proceeding, unless a party demonstrates grounds for disqualification.
4. Any person may serve as hearing officer at successive stages of the same adjudicative proceeding, unless a party demonstrates grounds for disqualification.

28-32-39. Adjudicative proceedings - Findings of fact, conclusions of law, and order of agency - Notice.

1. In an adjudicative proceeding an administrative agency shall make and state concisely and explicitly its findings of fact and its separate conclusions of law and the order of the agency based upon its findings and conclusions.
2. If the agency head, or another person authorized by the agency head or by law to issue a final order, is presiding, the order issued is the final order. The agency shall serve a copy of the final order and the findings of fact and conclusions of law on which it is based upon all the parties to the proceeding within thirty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible, in

the manner allowed for service under the North Dakota Rules of Civil Procedure.

3. If the agency head, or another person authorized by the agency head or by law to issue a final order, is not presiding, then the person presiding shall issue recommended findings of fact and conclusions of law and a recommended order within thirty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible. The recommended findings of fact and conclusions of law and the recommended order become final unless specifically amended or rejected by the agency head. The agency head may adopt the recommended findings of fact and conclusions of law and the recommended order as final. The agency may allow petitions for review of a recommended order and may allow oral argument pending issuance of a final order. An administrative agency may adopt rules regarding the review of recommended orders and other procedures for issuance of a final order by the agency. If a recommended order is issued, the agency must serve a copy of any final order issued and the findings of fact and conclusions of law on which it is based upon all the parties to the proceeding within sixty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible, in the manner allowed for service under the North Dakota Rules of Civil Procedure.

28-32-40. Petition for reconsideration.

1. Any party before an administrative agency who is aggrieved by the final order of the agency, within fifteen days after notice has been given as required by section 28-32-39, may file a petition for reconsideration with the agency. Filing of the petition is not a prerequisite for seeking judicial review.
2. Any party appearing before the workers compensation bureau may have thirty days within which to file a petition for reconsideration.
3. The party must submit with the petition for reconsideration a statement of the specific grounds upon which relief is requested or a statement of any further showing to be made in the proceeding. The petition must also state whether a rehearing is requested. The petition and any statement shall be considered a part of the record in the proceeding.
4. The administrative agency may deny the petition for reconsideration or may grant the petition on such terms as it may prescribe. If a rehearing is granted, the agency may allow a new hearing or limit the hearing as appropriate. The agency may dissolve or amend the final order and set the matter for further hearing. The petition is deemed to have been denied if the agency does not dispose of it within thirty days after the filing of the petition. Any rehearing must be presided over by the same person or persons presiding previously at hearing, if available. Any amended findings, conclusions, and orders must be issued by the same person or persons who issued the previous recommended or final orders, if available. Within thirty days after the close of proceedings upon reconsideration, or as soon thereafter as possible, the agency shall issue and give notice of its order upon reconsideration as required in subsection 3 of section 28-32-39.

5. This section does not limit the right of any agency to reopen any proceeding or rehear any matter under any continuing jurisdiction which is granted to the agency by statute.

28-32-41. Effectiveness of orders. Unless a later date is stated in the order, a final order of an administrative agency is effective immediately, but a party may not be required to comply with a final order unless it has been served upon the party and notice is deemed given pursuant to section 28-32-39 or the party has actual knowledge of the final order. A nonparty may not be required to comply with a final order unless the agency has made the final order available for public inspection and copying or the nonparty has actual knowledge of the final order. This section does not preclude an agency from taking emergency action to protect the public health, safety, or welfare, as authorized by statute.

28-32-42. Appeal from determination of agency - Time to appeal - How appeal taken.

1. Any party to any proceeding heard by an administrative agency, except when the order of the administrative agency is declared final by any other statute, may appeal from the order within thirty days after notice of the order has been given as required by section 28-32-39. If a reconsideration has been requested as provided in section 28-32-40, the party may appeal within thirty days after notice of the final determination upon reconsideration has been given as required by sections 28-32-39 and 28-32-40. If an agency does not dispose of a petition for reconsideration within thirty days after the filing of the petition, the agency is deemed to have made a final determination upon which an appeal may be taken.
2. Any interested person who has participated in the rulemaking process of an administrative agency may appeal the agency's rulemaking action if the appeal is taken within ninety days after the date of publication in the North Dakota Administrative Code of the rule resulting from the agency rulemaking action.
3.
 - a. The appeal of an order may be taken to the district court designated by law, and if none is designated, then to the district court of the county in which the hearing or a part thereof was held. If the administrative proceeding was disposed of informally, or for some other reason no hearing was held, an appeal may be taken to the district court of Burleigh County. Only final orders are appealable. A procedural order made by an administrative agency while a proceeding is pending before it is not a final order.
 - b. The appeal of an agency's rulemaking action may be taken to the district court of Burleigh County.
4. An appeal shall be taken by serving a notice of appeal and specifications of error specifying the grounds on which the appeal is taken, upon the administrative agency concerned, upon the attorney general or an assistant attorney general, and upon all the parties to the proceeding before the administrative agency, and by filing the notice of appeal and specifications of error together with proof of service of the notice of appeal, and the undertaking required by this section, with the clerk of the district court to which the appeal is taken. In an appeal of an agency's rulemaking action, only the administrative agency concerned,

the attorney general, or an assistant attorney general, as well as the legislative council, need to be notified.

5. The notice of appeal must specify the parties taking the appeal as appellants. The agency and all other parties of record who are not designated as appellants must be named as appellees. A notice of appeal of agency rulemaking actions need not name all persons participating in the rulemaking proceeding as appellees. The agency and all parties of record have the right to participate in the appeal. In the appeal of agency rulemaking action, any person who has participated in the rulemaking process has the right to participate in the appeal.
6. A bond or other undertaking for costs on appeal must be filed by the appellant as is required by appellants for costs on appeal in civil cases under the rules of appellate procedure. The bond or other undertaking must be filed with the clerk of the district court with the notice of appeal, must be made to the state of North Dakota, and may be enforced by the agency concerned for and on behalf of the state as obligee. A bond or other undertaking is not required when filing fees have been waived by a district court pursuant to section 27-01-07 or when the costs of preparation and filing of the record of administrative agency proceedings have been waived by a district court pursuant to subsection 3 of section 28-32-44.

28-32-43. Docketing of appeals. Appeals taken in accordance with this chapter must be docketed as other cases pending in the district court are docketed and must be heard and determined by the court without a jury at such time as the court shall determine.

28-32-44. Agency to maintain and certify record on appeal.

1. An administrative agency shall maintain an official record of each adjudicative proceeding or other administrative proceeding heard by it.
2. Within thirty days, or a longer time as the court by order may direct, after an appeal has been taken to the district court as provided in this chapter, and after payment by the appellant of the estimated cost of preparation and filing of the entire record of the proceedings before the agency, the administrative agency concerned shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original or a certified copy of the entire record of proceedings before the agency, or an abstract of the record as may be agreed upon and stipulated by the parties. Upon receiving a copy of the notice of appeal and specifications of error pursuant to subsection 4 of section 28-32-42, the administrative agency shall notify the party appealing of the estimated costs of preparation and filing of the record. Thereafter, the party appealing shall pay the administrative agency the estimated costs required by this subsection. If the actual costs of preparation and filing of the entire record of the proceedings is greater than the estimated costs, the party appealing shall pay to the agency the difference. If the actual costs are less than the estimated costs, the agency shall pay to the party appealing the difference. Any payment for the costs of preparation and filing of the record must be paid into the insurance recovery fund and is appropriated as a refund to the agency for the purposes of defraying the costs of preparing and filing the record. An

agency may contract with any person or another agency to prepare and file the record of any proceeding before the agency.

3. The cost of preparation and filing of the record may be waived by the district court upon application by an appellant, showing that the appellant is a low-income person unable to afford these costs. When a waiver is granted, the costs of preparation and filing of the record must be paid by the administrative agency.
4. The agency record of the proceedings, as applicable, may consist of only the following:

 - a. The complaint, answer, and other initial pleadings or documents.
 - b. Notices of all proceedings.
 - c. Any prehearing notices, transcripts, documents, or orders.
 - d. Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.
 - e. A statement of matters officially noticed.
 - f. Offers of proof and objections and rulings thereon.
 - g. Proposed findings, requested orders, and exceptions.
 - h. The transcript of the hearing prepared for the person presiding at the hearing, including all testimony taken, and any written statements, exhibits, reports, memoranda, documents, or other information or evidence considered before final disposition of proceedings.
 - i. Any recommended or proposed order, recommended or proposed findings of fact and conclusions of law, final order, final findings of fact and conclusions of law, or findings of fact and conclusions of law or orders on reconsideration.
 - j. Any information considered pursuant to section 28-32-25.
 - k. Matters placed on the record after an ex parte communication.
5. Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for administrative agency action and judicial review of an administrative agency action.
6. The record on review of agency rulemaking action, as applicable, may consist of only the following:

 - a. All agency notices concerning proposed rulemaking.
 - b. A copy of the proposed rule upon which written and oral submissions were made.
 - c. A copy of the rule as submitted for publication.

- d. Any opinion letters by the attorney general as to a rule's legality or the legality of the agency's rulemaking action.
 - e. A copy of any interim rule and the agency's findings and statement of the reasons for an interim rule.
 - f. The regulatory analysis of a proposed rule.
 - g. The transcript of any oral hearing on a proposed rule.
 - h. All written submissions made to the agency on a proposed rule.
 - i. Any staff memoranda or data prepared for agency consideration in regard to the proposed rule.
 - j. Any other document that the agency believes is relevant to the appeal.
 - k. Any other document that is not privileged and which is a public record that the appellant requests the agency to include in the record, if relevant to the appeal.
7. If the notice of appeal specifies that no exception or objection is made to the agency's findings of fact, and that the appeal is concerned only with the agency's conclusions of law based on the facts found by it, the agency may submit an abstract of the record along with such portions of the record as the agency deems necessary, to be supplemented by those portions of the record requested to be submitted by the appellant.
8. The court may permit amendments or additions to the record filed by the administrative agency in order to complete the record.

28-32-45. Consideration of additional or excluded evidence. If an application for leave to offer additional testimony, written statements, documents, exhibits, or other evidence is made to the court in which an appeal from a determination of an administrative agency is pending, and it is shown to the satisfaction of the court that the additional evidence is relevant and material and that there were reasonable grounds for the failure to offer the evidence in the hearing or proceeding, or that the evidence is relevant and material to the issues involved and was rejected or excluded by the agency, the court may order that the additional evidence be taken, heard, and considered by the agency on terms and conditions as the court may deem proper. After considering the additional evidence, the administrative agency may amend or reject its findings of fact, conclusions of law, and order and shall file with the court a transcript of the additional evidence with its new or amended findings of fact, conclusions of law, and order, if any, which constitute a part of the record with the court.

28-32-46. Scope of and procedure on appeal from determination of administrative agency. A judge of the district court must review an appeal from the determination of an administrative agency based only on the record filed with the court. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court must affirm the order of the agency unless it finds that any of the following are present:

1. The order is not in accordance with the law.

2. The order is in violation of the constitutional rights of the appellant.
3. The provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.

If the order of the agency is not affirmed by the court, it must be modified or reversed, and the case shall be remanded to the agency for disposition in accordance with the order of the court.

28-32-47. Scope of and procedure on appeal from agency rulemaking.

A judge of the district court shall review an appeal from an administrative agency's rulemaking action based only on the record filed with the court. If an appellant requests documents to be included in the record but the agency does not include them, the court, upon application by the appellant, may compel their inclusion. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court shall affirm the agency's rulemaking action unless it finds that any of the following are present:

1. The provisions of this chapter have not been substantially complied with in the agency's rulemaking actions.
2. A rule published as a result of the rulemaking action appealed is unconstitutional on the face of the language adopted.
3. A rule published as a result of the rulemaking action appealed is beyond the scope of the agency's authority to adopt.
4. A rule published as a result of the rulemaking action appealed is on the face of the language adopted an arbitrary or capricious application of authority granted by statute.

If the rulemaking action of the agency is not affirmed by the court, it must be remanded to the agency for disposition in accordance with the order of the court, or the rule or a portion of the rule resulting from the rulemaking action of the agency must be declared invalid for reasons stated by the court.

28-32-48. Appeal - Stay of proceedings. An appeal from an order or the rulemaking action of an administrative agency does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay. The court may impose terms and conditions for a stay of the enforcement of the order or for a stay in the effect of a published rule. This section does not prohibit the operation of an automatic stay upon the enforcement of an administrative order as may be required by another statute.

28-32-49. Review in supreme court. The judgment of the district court in an appeal from an order or rulemaking action of an administrative agency may be

reviewed in the supreme court on appeal in the same manner as provided in section 28-32-46 or 28-32-47, except that the appeal to the supreme court must be taken within sixty days after the service of the notice of entry of judgment in the district court. Any party of record, including the agency, may take an appeal from the final judgment of the district court to the supreme court. If an appeal from the judgment of the district court is taken by an agency, the agency may not be required to pay a docket fee or file a bond for costs or equivalent security.

28-32-50. Actions against administrative agencies - Attorneys' fees and costs.

1. In any civil judicial proceeding involving as adverse parties an administrative agency and a party not an administrative agency or an agent of an administrative agency, the court must award the party not an administrative agency reasonable attorneys' fees and costs if the court finds in favor of that party and, in the case of a final agency order, determines that the administrative agency acted without substantial justification.
2. This section applies to an administrative or civil judicial proceeding brought by a party not an administrative agency against an administrative agency for judicial review of a final agency order, or for judicial review pursuant to this chapter of the legality of agency rulemaking action or a rule adopted by an agency as a result of the rulemaking action being appealed.
3. Any attorneys' fees and costs awarded pursuant to this section must be paid from funds available to the administrative agency the final order, rulemaking action, or rule of which was reviewed by the court. The court may withhold all or part of the attorneys' fees from any award if the court finds the administrative agency's action, in the case of a final agency order, was substantially justified or that special circumstances exist which make the award of all or a portion of the attorneys' fees unjust.
4. This section does not alter the rights of a party to collect any fees under other applicable law.

28-32-51. Witnesses - Immunity. If any person objects to testifying or producing evidence, documentary or otherwise, at any proceeding before an administrative agency, claiming a privilege against self-incrimination, but is directed to testify or produce evidence pursuant to the written approval of the attorney general, that person must comply with the direction; but no testimony or evidence compelled from that person, after a valid claim of privilege against self-incrimination has been made, may be used against that person in any criminal proceeding subjecting that person to a penalty or forfeiture. No person testifying at any proceeding before an administrative agency may be exempted from prosecution and punishment for perjury or giving a false statement, or for contempt committed in answering, or failing to answer, or in producing, or in failing to produce, evidence, pursuant to direction given under this section.

28-32-52. Elected official authority. This chapter does not prohibit an elected official from presiding at that agency's cases, nor from deciding cases within that agency's jurisdiction.

SECTION 13. Section 28-32-18, as created by section 12 of this Act, is amended and reenacted as follows:

28-32-18. Administrative rules committee may ~~void~~ suspend rule - Grounds - Amendment by agreement of agency and committee.

1. The legislative council's administrative rules committee may find, for any reason under this subsection, that all or any portion of a rule ~~is void~~ should be reviewed by the legislative assembly, and the committee may suspend the rule or portion of a rule under this subsection if that rule is initially considered by the committee within ninety days after the date of the administrative code supplement in which the rule change appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that rule is initially considered by the committee at the first meeting of the administrative rules committee following the regular session of the legislative assembly. A rule or portion of a rule suspended under this subsection becomes permanently ineffective unless it is ratified by both houses of the legislative assembly during the next session of the legislative assembly, in which case it is effective as of the date of ratification by the second house of the legislative assembly. An agency seeking ratification of its rule shall introduce a bill for that purpose. The administrative rules committee may ~~find~~ suspend a rule or portion of a rule ~~void~~ if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
 - a. An absence of statutory authority.
 - b. An emergency relating to public health, safety, or welfare.
 - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
 - d. A conflict with state law.
 - e. Arbitrariness and capriciousness.
 - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.
2. The administrative rules committee may ~~find~~ suspend a rule ~~void~~ at the meeting at which the rule is initially considered by the committee or may hold consideration of that rule for one subsequent meeting. Within three business days after the administrative rules committee ~~finds that~~ suspends a rule is void, the office of the legislative council shall provide written notice of that ~~finding~~ suspension and the committee's specific finding under subdivisions a through f of subsection 1 to the adopting agency and to the chairman of the legislative council. Within fourteen days after receipt of the notice, the adopting agency may file a petition with the chairman of the legislative council for review by the legislative council of the decision of the administrative rules committee. ~~If the adopting agency does not file a petition for review, the rule becomes void on the fifteenth day after the notice from the office of the legislative council to the adopting agency. If within sixty days after~~ After receipt of the petition ~~from the adopting agency the legislative council has not disapproved by motion the finding of the administrative rules committee, the rule is void~~ and before the next session of the legislative assembly,

the legislative council by approval of a motion may lift the suspension and reinstate the rule's effectiveness.

3. An agency may amend or repeal a rule or create a related rule if, after consideration of rules by the administrative rules committee, the agency and committee agree that the rule amendment, repeal, or creation is necessary to address any of the considerations under subsection 1. A rule amended, repealed, or created under this subsection is not subject to the other requirements of this chapter relating to adoption of administrative rules and may be resubmitted by the agency to the legislative council for publication as amended, repealed, or created and reconsidered by the administrative rules committee at a subsequent meeting at which public comment on the agreed rule change must be allowed.

SECTION 14. AMENDMENT. Section 38-08-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

38-08-13. Person adversely affected may apply for reconsideration. Any person adversely affected by any order of the commission may file in writing a petition for reconsideration in accordance with the procedures of section ~~28-32-14~~ 28-32-40. The commission shall grant or deny any such petition in whole or in part in accordance with the provisions of section ~~28-32-14~~ 28-32-40 or rules adopted pursuant to it.

SECTION 15. AMENDMENT. Section 38-08-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

38-08-14. Person adversely affected may appeal to district court.

1. Any person adversely affected by an order entered by the commission may appeal, pursuant to chapter 28-32, from the order to the district court for the county in which the oil or gas well or the affected property is located. However, if the oil or gas well or the property affected by the order is located in or underlies more than one county, any appeal may be taken to the district court for any county in or under which any part of the affected property is located.
2. At the time of filing of the notice of appeal, if an application for the suspension of the order is filed, the commission may enter an order suspending the order complained of and fixing the amount of a supersedeas bond. Within ten days after the entry of an order by the commission which suspends the order complained of and fixes the amount of the bond, the appellant shall file with the commission a supersedeas bond in the required amount and with proper surety. Upon approval of the bond, the order of the commission suspending the order complained of is effective until its final disposition upon appeal. The bond must run in favor of the commission for the use and benefit of any person who may suffer damage by reason of the suspension of the order in the event the same is affirmed by the district court. If the order of the commission is not superseded, it must continue in force and effect as if no appeal was pending, unless a stay is ordered by the court to which the appeal is taken under section ~~28-32-20~~ 28-32-48.
3. Orders of the commission must be sustained by the district court if the commission has regularly pursued its authority and its findings and

conclusions are sustained by the law and by substantial and credible evidence.

SECTION 16. AMENDMENT. Section 38-14.1-35 of the North Dakota Century Code is amended and reenacted as follows:

38-14.1-35. Judicial review.

1. There is a right to judicial review pursuant to sections ~~28-32-15~~ 28-32-42 through ~~28-32-24~~ 28-32-49:
 - a. To any applicant or any person with an interest which is or may be adversely affected who has participated in administrative proceedings under section 38-14.1-30 as an objector, and who is aggrieved by the decision of the commission.
 - b. To any person with an interest which is or may be adversely affected who has participated in the administrative proceedings if the commission fails to act within the time limits specified in this chapter or in accordance with the provisions of chapter 28-32.
 - c. To any permittee who is subject to an order by the commission implementing a final decision to suspend or revoke ~~his~~ the permittee's permit under section 38-14.1-28 or to any operator or permittee who is subject to an order by the commission implementing a final decision imposing a penalty under section 38-14.1-29; or any person having an interest which is or may be adversely affected by such order or by any modification, vacation, or termination of such order.
 - d. To any person claiming to be aggrieved or adversely affected by any regulation promulgated by the commission to carry out the provisions of this chapter or by any order of the commission or by its failure to enter an order.
2. Availability of judicial review under this section may not be construed to limit the operation of the rights established in section 38-14.1-40 except as provided therein.

SECTION 17. AMENDMENT. Section 39-06.2-10.7 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.7. Judicial review. Any person whose commercial driver's license or privilege has been suspended, revoked, or denied by the decision of the hearing officer under section 39-06.2-10.6 may appeal within seven days after the date of the hearing under section 39-06.2-10.6 as shown by the date of the hearing officer's decision, section ~~28-32-15~~ 28-32-42 notwithstanding, by serving on the 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 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 director and to the hearing officer who rendered the decision. Neither the director nor the court may stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the 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. It is

the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the director or hearing officer. The court may direct that the matter be returned to the director or hearing officer for rehearing and the presentation of additional evidence.

SECTION 18. AMENDMENT. Section 39-20-06 of the North Dakota Century Code is amended and reenacted as follows:

39-20-06. Judicial review. Any person whose operator's license or privilege has been suspended, revoked, or denied by the decision of the hearing officer under section 39-20-05 may appeal within seven days after the date of the hearing under section 39-20-05 as shown by the date of the hearing officer's decision, section ~~28-32-45~~ 28-32-42 notwithstanding, by serving on the 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 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 director and to the hearing officer who rendered the decision. Neither the director nor the court may stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the 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. It is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the director or hearing officer. The court may direct that the matter be returned to the director or hearing officer for rehearing and the presentation of additional evidence.

SECTION 19. AMENDMENT. Subsection 8 of section 43-06-15 of the North Dakota Century Code is amended and reenacted as follows:

8. After the hearing, the board, under section ~~28-32-13~~ 28-32-39, shall make and give notice of its determination or decision as to whether the offenses charged have been committed or the conditions charged do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:
 - a. Revoke the license;
 - b. Suspend the licensee's right to practice for a period not to exceed one year;
 - c. Suspend its judgment of revocation on terms and conditions determined by the board;
 - d. Place the licensee on probation; or
 - e. Take any other disciplinary action which the board in its discretion considers proper, including the ordering of an adjustment to a patient's bill or refund of such amount previously paid, including reasonable interest from the date of the order, to a patient or payor of any unconscionable fees for chiropractic services.
 - f. In addition to the actions imposed in subdivisions a through e, the board may:

- (1) Require payment of all cost of proceedings resulting in a disciplinary action.
- (2) Impose a civil penalty not exceeding ten thousand dollars for each separate violation, to deprive the chiropractor of any economic advantage gained by reason of the violation found and to reimburse the board for the cost of the investigation and proceedings.

SECTION 20. AMENDMENT. Section 43-07-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-15. Revocation of license - 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 1 of section ~~28-32-05~~ 28-32-21. If the registrar determines that the licensee has been guilty of any of the acts or omissions charged, the registrar shall revoke the contractor's license. A contractor aggrieved by a decision of the registrar in revoking the contractor's license 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. A "licensee" whose license is revoked includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 govern any appeal and proceedings hereunder.

SECTION 21. AMENDMENT. Section 43-10-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-10-19. Hearing - Appeals. Hearings regarding disciplinary action or denial of a license must be held under chapter 28-32. An appeal from the board's final decision may be taken in accordance with the provisions of section ~~28-32-15~~ 28-32-42.

SECTION 22. AMENDMENT. Section 43-11-32 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-32. Hearings. All hearings must be conducted pursuant to chapter 28-32. For purposes of the a hearing, ~~the licensee or applicant is deemed to be the sole party in interest under section 28-32-08 and the provisions of section 28-32-05 apply~~ 28-32-21 applies only to the licensee.

SECTION 23. AMENDMENT. Section 43-32-28.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-32-28.1. Hearing. All hearings must be conducted pursuant to chapter 28-32. For purposes of a hearing, ~~the licensee or applicant is the sole party in interest under section 28-32-08 and section 28-32-05~~ 28-32-21 applies only to the licensee or applicant.

SECTION 24. 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.
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 licensee is deemed to be the sole party in interest under section ~~28-32-08~~ and the provisions of section ~~28-32-05~~ 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 ~~28-32-15~~ 28-32-42.

SECTION 25. AMENDMENT. Subsection 9 of section 50-01.2-06 of the North Dakota Century Code is amended and reenacted as follows:

9. The decision of the peer review committee is a final administrative decision. That decision may be appealed to the district court, and for that purpose, the decision must be treated as a decision on a request for rehearing made pursuant to section ~~28-32-14~~ 28-32-40. Appeal to the district court must be taken in the manner required by section ~~28-32-15~~ 28-32-42. The department shall submit a record consisting of:

- a. Submissions made, and questions asked and answered, under subsection 7; and
- b. The motion and vote upon which the peer review committee acted to decide the matter.

SECTION 26. AMENDMENT. Subsection 9 of section 50-24.4-01.1 of the North Dakota Century Code is amended and reenacted as follows:

9. The appeal determination under subsection 8 is the final administrative decision of the agency. That decision is subject to appeal to the district court, and for that purpose, the decision must be treated as a decision on a petition for rehearing made pursuant to section ~~28-32-14~~ 28-32-40. Appeal to the district court must be taken in the manner required by section ~~28-32-15~~ 28-32-42.

SECTION 27. AMENDMENT. Section 54-03-24 of the North Dakota Century Code is amended and reenacted as follows:

54-03-24. Administrative Code distributed to each legislator - Retention.

Each member of the legislative assembly is entitled to receive a current set of the North Dakota Administrative Code as provided in section ~~28-32-03.2~~ 28-32-20. The legislator is entitled to current supplements and volumes as provided in section ~~28-32-03.2~~ 28-32-20 to maintain the code during the legislator's service. The code received by a legislator under this section is not subject to section 46-04-04. After a legislator's service in the legislative assembly is terminated, the secretary of state shall inform the legislator how to obtain a subscription to maintain the legislator's code.

SECTION 28. AMENDMENT. Section 54-23.4-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-23.4-11. Attorney's fees. The division shall determine and award reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing the claimant if the claimant prevails after a petition for reconsideration or rehearing under section ~~28-32-14~~ 28-32-40 from an order reducing or denying crime victims compensation benefits. A district court may award attorney's fees in an appeal pursuant to section ~~28-32-15~~ 28-32-42 if the claimant prevails on appeal from an order reducing or denying benefits. Attorney's fees are allowable for settlement of a disputed claim. Attorney's fees are not allowable for assisting a claimant in filing a claim. An award of attorney's fees is in addition to an award of compensation. An award of attorney's fees may not exceed the lesser of twenty percent of the compensation awarded or one thousand dollars. No attorney may contract for or receive any larger sum than the amount allowed.

SECTION 29. AMENDMENT. Section 54-35-02.6 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-35-02.6. Rules reviewed by administrative rules committee ~~on administrative rules~~ - Committee responsibility. The administrative rules committee ~~on administrative rules~~ shall review administrative rules adopted under chapter 28-32. The committee shall consider oral and written comments received concerning administrative rules. The committee shall study and review administrative rules and related statutes to determine whether:

1. Administrative agencies are properly implementing legislative purpose and intent.
2. There is dissatisfaction with administrative rules or with statutes relating to administrative rules.
3. There are unclear or ambiguous statutes relating to administrative rules.

The committee may make rule change recommendations to the adopting agency and may make recommendations to the legislative council for the amendment or repeal of statutes relating to administrative rules. The committee's failure to review proposed rules prior to publication in the North Dakota Administrative Code does not prevent rules from taking effect. Except for ~~objections~~ action pursuant to section ~~28-32-03.3~~ 28-32-17 or 28-32-18, the recommendations or opinions of the committee do not affect the legality of any rule as determined by the attorney general.

¹⁴⁹ **SECTION 30. AMENDMENT.** Subsection 3 of section 54-57-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The director of administrative hearings may preside as an administrative law judge at administrative hearings and may employ or appoint additional administrative law judges to serve in the office as necessary to fulfill the duties of office as described in section 54-57-04 and section ~~28-32-08.5~~ 28-32-31 and to provide administrative law judges to preside at administrative hearings as requested by agencies. After August 1, 1995, the director of administrative hearings may employ or appoint only such additional administrative law judges who are attorneys at law in good standing, admitted to the bar in the state, and currently licensed by the state bar board. The director may delegate to an employee the exercise of a specific statutory power or duty as deemed advisable, subject to the director's control, including the powers and duties of a deputy director. All administrative law judges must be classified employees, except that the director of administrative hearings must be an unclassified employee who only may be removed, during a term of office, for cause. Each administrative law judge must have a demonstrated knowledge of administrative practices and procedures and must be free of any association that would impair the person's ability to function officially in a fair and objective manner.

¹⁵⁰ **SECTION 31. AMENDMENT.** Subsection 1 of section 54-57-03 of the 1999 Supplement to 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 hearings of administrative agencies under chapter 28-32, except

¹⁴⁹ Section 54-57-01 was also amended by section 21 of House Bill No. 1071, chapter 286.

¹⁵⁰ Section 54-57-03 was also amended by section 4 of House Bill No. 1455, chapter 296.

hearings conducted by the public service commission, the industrial commission, the commissioner of insurance, the workers compensation bureau, the state engineer, the department of transportation, job service North Dakota, and the commissioner of labor, except investigatory hearings ~~under section 28-32-08~~, and except rulemaking hearings held in accordance with section ~~28-32-02~~ 28-32-11, must be conducted by the office of administrative hearings in accordance with the administrative hearings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapters 12-56.1 and 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; 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 32. AMENDMENT. Section 54-57-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-57-04. Duties of administrative law judges. ~~It is the duty of all~~ All administrative law judges ~~to shall~~ shall comply with the duties of hearing officers under section ~~28-32-08.5~~ 28-32-31 for all hearings of administrative agencies under chapter 28-32, as well as for all hearings of administrative agencies not under chapter 28-32, in accordance with applicable laws.

SECTION 33. AMENDMENT. Section 57-57-10 of the North Dakota Century Code is amended and reenacted as follows:

57-57-10. Procedural rules for hearing - Decision - Appeal. A written record must be made of all testimony offered at any hearing before the hearing board. A transcript of the testimony taken by or before the hearing board must be furnished to any party upon written request. After hearing all the testimony and after making any independent investigations it deems necessary, the hearing board shall make its findings of fact and the decision of the majority will rule. The state forester as the presiding officer of the hearing board shall make and enter this order accordingly within thirty days after the final adjournment of the hearing. An appeal may be taken to the district court of the county in which the land in question is located within thirty days after notice is given to each of the parties to the proceeding. Only final orders or decisions substantially affecting the rights of parties are appealable. A procedural order made by the state forester or the hearing board during the hearing is not a final order nor an order affecting a substantial right. An appeal may be taken pursuant to the provisions of section ~~28-32-15~~ 28-32-42. An appeal from a determination or decision of the hearing board does not stay the enforcement of the determination or decision unless the court to which the appeal is taken, upon application and after a hearing, orders a stay. The court may impose such terms and conditions for a stay of the enforcement of the determination or decision appealed as it deems proper.

SECTION 34. AMENDMENT. Section 61-04-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-04-06. Criteria for issuance of permit. The state engineer shall issue a permit if the state engineer finds all of the following:

1. The rights of a prior appropriator will not be unduly affected.
2. The proposed means of diversion or construction are adequate.
3. The proposed use of water is beneficial.
4. The proposed appropriation is in the public interest. In determining the public interest, the state engineer shall consider all of the following:
 - a. The benefit to the applicant resulting from the proposed appropriation.
 - b. The effect of the economic activity resulting from the proposed appropriation.
 - c. The effect on fish and game resources and public recreational opportunities.
 - d. The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.
 - e. Harm to other persons resulting from the proposed appropriation.
 - f. The intent and ability of the applicant to complete the appropriation.

Subsection 1 of section ~~28-32-12.2~~ 28-32-38 does not apply to water permit application proceedings unless a request for a hearing is made. If an application is approved, the state engineer shall issue a conditional water permit allowing the applicant to appropriate water. Provided, however, the commission may, by resolution, reserve unto itself final approval authority over any specific water permit in excess of five thousand acre-feet [6167409.19 cubic meters]. The state engineer may cause a certified transcript to be prepared for any hearing conducted pursuant to this section. The costs for the original and up to nine copies of the transcript must be paid by the applicant.

SECTION 35. REPEAL. Chapter 28-32 of the North Dakota Century Code, as it existed on December 31, 2000, is repealed.

SECTION 36. EFFECTIVE DATE. This Act is effective for administrative rules for which the notice of rulemaking is filed with the office of the legislative council after July 31, 2001. Section 13 of this Act is suspended from operation and becomes effective retroactive to August 1, 2001, upon a ruling by the North Dakota

supreme court that any portion of subsection 1 of section 28-32-18 as created by section 12 of this Act is unconstitutional.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 294

HOUSE BILL NO. 1028

(Legislative Council)
(Administrative Rules Committee)

EMERGENCY RULES EFFECT

AN ACT to amend and reenact section 28-32-03 of the North Dakota Century Code, relating to authorization by the administrative rules committee before administrative rules may be effective on an emergency basis; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵¹ **SECTION 1. AMENDMENT.** Section 28-32-03 of the North Dakota Century Code as created by House Bill No. 1030, as approved by the Fifty-seventh Legislative Assembly, is amended and reenacted as follows:

28-32-03. Emergency rules.

1. If the agency, ~~with the approval of the governor, finds that emergency rulemaking is necessary because of imminent peril to the public health, safety, or welfare because a delay in rulemaking is likely to cause loss of revenues appropriated to support a duty imposed by law upon the agency or because reasonably necessary to avoid a delay in implementing an appropriations measure,~~ the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by section 28-32-10.
2. A proposed rule may be given effect on an emergency basis under this section if any of the following grounds exists regarding that rule:
 - a. Imminent peril threatens public health, safety, or welfare, which would be abated by emergency effectiveness;
 - b. A delay in the effective date of the rule is likely to cause a loss of funds appropriated to support a duty imposed by law upon the agency;
 - c. Emergency effectiveness is reasonably necessary to avoid a delay in implementing an appropriations measure; or
 - d. Emergency effectiveness is necessary to meet a mandate of federal law.

¹⁵¹ Section 28-32-03 was created by section 12 of House Bill No. 1030, chapter 293.

3. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule.
4. The agency's finding, and a brief statement of the agency's reason for the finding, must be filed with the office of the legislative council, with the final adopted emergency rule.
5. The agency shall take appropriate measures to make interim final rules known to every person who may be affected by them.
6. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

SECTION 2. EFFECTIVE DATE. This Act is effective for administrative rules for which the notice of rulemaking is filed with the office of the Legislative Council after July 31, 2001.

Approved March 26, 2001

Filed March 26, 2001

CHAPTER 295

HOUSE BILL NO. 1027

(Legislative Council)
(Administrative Rules Committee)

ADMINISTRATIVE RULES COMMITTEE RULES CONSIDERATION

AN ACT to amend and reenact subsection 3 of section 28-32-02 of the North Dakota Century Code or in the alternative to amend and reenact section 28-32-11 of the North Dakota Century Code, relating to agency procedures to notify interested parties of when rules adopted by the agency will be considered by the administrative rules committee; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1030 does not become effective, subsection 3 of section 28-32-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. The agency shall adopt a procedure to allow interested parties to request and receive notice from the agency of the date and place the rule will be reviewed by the administrative rules committee. In case of substantive rules, the agency shall conduct an oral hearing. The agency shall consider fully all written and oral submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.

¹⁵² **SECTION 2. AMENDMENT.** Section 28-32-11 of the North Dakota Century Code as created by House Bill No. 1030, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

28-32-11. Conduct of hearings - Notice of administrative rules committee consideration - Consideration and written record of comments. The agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. The agency shall adopt a procedure to allow interested parties to request and receive notice from the agency of the date and place the rule will be reviewed by the administrative rules committee. In case of substantive rules, the agency shall conduct an oral hearing. The agency shall consider fully all written and oral

¹⁵² Section 28-32-11 was created by section 12 of House Bill No. 1030, chapter 293.

submissions respecting a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.

SECTION 3. EFFECTIVE DATE. This Act is effective for administrative rules for which public hearings are held after July 31, 2001.

Approved March 19, 2001

Filed March 19, 2001

CHAPTER 296

HOUSE BILL NO. 1455

(Representatives Koppelman, Aarsvold, Belter, Devlin)
(Senators G. Nelson, Robinson)

ADMINISTRATIVE LAW DECISION FINALITY

AN ACT to amend and reenact subsection 1 of section 28-32-14 and sections 28-32-17, 28-32-19, and 54-57-03 of the North Dakota Century Code, relating to finality of decisions of administrative law judges in adjudicative proceedings of administrative agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵³ **SECTION 1. AMENDMENT.** Subsection 1 of section 28-32-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any party before an administrative agency who is aggrieved by the final order of the agency, within fifteen days after notice has been given as required by section 28-32-13, may file a petition for reconsideration with the agency. Filing of the petition is not a prerequisite for seeking judicial review. If the agency's hearing officer issues the agency's final order, the petition for reconsideration must be addressed to the hearing officer, who may grant or deny the petition under subsection 4.

¹⁵⁴ **SECTION 2. AMENDMENT.** Section 28-32-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-17. Agency to maintain and certify record on appeal.

1. An administrative agency shall maintain an official record of each adjudicative proceeding or other administrative proceeding heard by it.
2. Within thirty days, or a longer time as the court by order may direct, after an appeal has been taken to the district court as provided in this chapter, and after payment by the appellant of the estimated cost of preparation and filing of the entire record of the proceedings before the agency, the administrative agency concerned shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original or a certified copy of the entire record of proceedings before the agency, or an abstract of the record as may be agreed upon and stipulated by the parties. Upon receiving a copy of the notice of appeal and specifications of error pursuant to subsection 4 of section 28-32-15 and unless the agency is appealing, the administrative agency shall

¹⁵³ Section 28-32-14 was created by section 12 of House Bill No. 1030, chapter 293.

¹⁵⁴ Section 28-32-17 was created by section 12 of House Bill No. 1030, chapter 293.

notify the party appealing of the estimated costs of preparation and filing of the record. Thereafter, unless the agency is appealing, the party appealing shall pay the administrative agency the estimated costs required by this subsection. If the actual costs of preparation and filing of the entire record of the proceedings is greater than the estimated costs, the party appealing shall pay to the agency the difference. If the actual costs are less than the estimated costs, the agency shall pay to the party appealing the difference. Any payment for the costs of preparation and filing of the record must be paid into the insurance recovery fund and is hereby appropriated as a refund to the agency for the purposes of defraying the costs of preparing and filing the record. An agency may contract with any person or another agency to prepare and file the record of any proceeding before the agency.

3. The cost of preparation and filing of the record may be waived by the district court upon application by an appellant, showing that the appellant is a low-income person unable to afford these costs. When a waiver is granted, the costs of preparation and filing of the record must be paid by the administrative agency.
4. The agency record of the proceedings, as applicable, must consist of only the following:
 - a. The complaint, answer, and other initial pleadings or documents.
 - b. Notices of all proceedings.
 - c. Any prehearing notices, transcripts, documents, or orders.
 - d. Any motions, pleadings, briefs, petitions, requests, and intermediate rulings.
 - e. A statement of matters officially noticed.
 - f. Offers of proof and objections and rulings thereon.
 - g. Proposed findings, requested orders, and exceptions.
 - h. The transcript of the hearing prepared for the person presiding at the hearing, including all testimony taken, and any written statements, exhibits, reports, memoranda, documents, or other information or evidence considered before final disposition of proceedings.
 - i. Any recommended or proposed order, recommended or proposed findings of fact and conclusions of law, final order, final findings of fact and conclusions of law, or findings of fact and conclusions of law or orders on reconsideration.
 - j. Any information considered pursuant to section 28-32-07.
 - k. Matters placed on the record after an ex parte communication.
5. Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for

- administrative agency action and judicial review of an administrative agency action.
6. The record on review of agency rulemaking action, as applicable, must consist of only the following:
 - a. All agency notices concerning proposed rulemaking.
 - b. A copy of the proposed rule upon which written and oral submissions were made.
 - c. A copy of the rule as submitted for publication.
 - d. Any opinion letters by the attorney general as to a rule's legality or the legality of the agency's rulemaking action.
 - e. A copy of any interim rule and the agency's findings and statement of the reasons for an interim rule.
 - f. The regulatory analysis of a proposed rule.
 - g. The transcript of any oral hearing on a proposed rule.
 - h. All written submissions made to the agency on a proposed rule.
 - i. Any staff memoranda or data prepared for agency consideration in regard to the proposed rule.
 - j. Any other document that the agency believes is relevant to the appeal.
 - k. Any other document that is not privileged and which is a public record that the appellant requests the agency to include in the record, if relevant to the appeal.
 7. If the notice of appeal specifies that no exception or objection is made to the agency's findings of fact, and that the appeal is concerned only with the agency's conclusions of law based on the facts found by it, the agency may submit an abstract of the record along with such portions of the record as the agency deems necessary, to be supplemented by those portions of the record requested to be submitted by the appellant or by the other party when the agency is appealing.
 8. The court may permit amendments or additions to the record filed by the administrative agency in order to complete the record.

¹⁵⁵ **SECTION 3. AMENDMENT.** Section 28-32-19 of the North Dakota Century Code is amended and reenacted as follows:

¹⁵⁵ Section 28-32-19 was created by section 12 of House Bill No. 1030, chapter 293.

28-32-19. Scope of and procedure on appeal from determination of administrative agency. A judge of the district court must review an appeal from the determination of an administrative agency based only on the record filed with the court. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court must affirm the order of the agency unless it shall find that any of the following are present:

1. The order is not in accordance with the law.
2. The order is in violation of the constitutional rights of the appellant.
3. Provisions of this chapter have not been complied with in the proceedings before the agency.
4. The rules or procedure of the agency have not afforded the appellant a fair hearing.
5. The findings of fact made by the agency are not supported by a preponderance of the evidence.
6. The conclusions of law and order of the agency are not supported by its findings of fact.
7. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the appellant.
8. The conclusions of law and order of the agency do not sufficiently explain the agency's rationale for not adopting any contrary recommendations by a hearing officer or an administrative law judge.

If the order of the agency is not affirmed by the court, it shall be modified or reversed, and the case shall be remanded to the agency for disposition in accordance with the order of the court.

¹⁵⁶ **SECTION 4. AMENDMENT.** Section 54-57-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-57-03. Hearings before administrative law judges.

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all ~~hearings~~ adjudicative proceedings of administrative agencies under chapter 28-32, except ~~hearings conducted by those of the public service commission, the industrial commission, the insurance commissioner of insurance, the workers compensation bureau, the state engineer, the department of transportation, job service North Dakota, and the labor commissioner of labor, except investigatory hearings under section 28-32-08, and except rulemaking hearings held in accordance with section 28-32-02,~~ must be conducted by the office of administrative hearings in accordance with the administrative hearings adjudicative

¹⁵⁶ Section 54-57-03 was also amended by section 31 of House Bill No. 1030, chapter 293.

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 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.

2. The agency head shall make a written request to the director requesting the designation of an administrative law judge to preside for each administrative ~~hearing~~ proceeding or adjudicative proceeding to be held. ~~An agency may request an administrative law judge to be designated to preside over the entire administrative proceeding.~~
3. Informal disposition of an administrative proceeding or adjudicative proceeding may be made by an agency at any time before or after the designation of an administrative law judge from the office of administrative hearings.
- ~~3.~~ 4. If a party to an administrative proceeding or adjudicative proceeding is in default, the agency may issue a default order and a written notice of default, including a statement of the grounds for default, prior to the hearing. The agency shall determine all the issues involved. If issued, the default notice and order must be served upon all the parties and the administrative law judge, if one has been ~~assigned~~ designated to preside. After service of the default notice and order, if a hearing is necessary to complete the administrative action with or without the participation of the party in default, an administrative law judge from the office of administrative hearings must preside.
4. ~~5.~~ When ~~assigning~~ designating administrative law judges to ~~conduct administrative hearings or to~~ preside in an administrative proceeding or adjudicative proceeding, the director shall attempt to assign an administrative law judge having expertise in the subject matter to be dealt with.
- ~~5.~~ 6. The director of administrative hearings may assign an administrative law judge to preside in an administrative proceeding or adjudicative proceeding, upon request, to any agency exempted from the provisions of this section, to any agency, or part of any agency, that is not an administrative agency subject to the provisions of chapter 28-32, to any unit of local government in this state, to any tribal government in this state, to the judicial branch, or to any agency to conduct a rulemaking hearing.

CHAPTER 297

HOUSE BILL NO. 1029 (Legislative Council) (Administrative Rules Committee)

RULES COMMENT FILING

AN ACT to amend and reenact subsection 1 of section 28-32-03 of the North Dakota Century Code or in the alternative to amend and reenact subsection 1 of section 28-32-15 of the North Dakota Century Code, relating to filing of comments on rules with rules filed for publication in the North Dakota Administrative Code; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1030 does not become effective, subsection 1 of section 28-32-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A copy of each rule adopted by an administrative agency, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion ~~thereon~~, on the rule must be filed by the adopting agency with the office of the legislative council for publication of the rule in the North Dakota Administrative Code.

¹⁵⁷ **SECTION 2. AMENDMENT.** Subsection 1 of section 28-32-15 of the North Dakota Century Code as created by House Bill No. 1030, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

1. A copy of each rule adopted by an administrative agency, a copy of each written comment and a written summary of each oral comment on the rule, and the attorney general's opinion ~~thereon~~, on the rule must be filed by the adopting agency with the office of the legislative council for publication of the rule in the North Dakota Administrative Code.

SECTION 3. EFFECTIVE DATE. This Act is effective for administrative rules filed after July 31, 2001, for publication in the North Dakota Administrative Code.

Approved March 14, 2001
Filed March 15, 2001

¹⁵⁷ Section 28-32-15 was created by section 12 of House Bill No. 1030, chapter 293.

CHAPTER 298

HOUSE BILL NO. 1451

(Representatives Koppelman, M. Klein, Severson, Skarphol)
(Senator Andrist)

EXISTING ADMINISTRATIVE RULES REVIEW

AN ACT to provide for administrative rules committee review of existing administrative rules.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Administrative rules committee review of existing administrative rules.

1. Upon request by the administrative rules committee, an administrative agency shall brief the committee on its existing administrative rules and point out any provisions that appear to be obsolete and any areas in which statutory authority has changed or been repealed since the rules were adopted or amended.
2. An agency may amend or repeal a rule without complying with the other requirements of this chapter relating to adoption of administrative rules and may resubmit the change to the legislative council for publication provided:
 - a. The agency initiates the request to the administrative rules committee for consideration of the amendment or repeal;
 - b. The agency provides notice to the regulated community, in a manner reasonably calculated to provide notice to those persons interested in the rule, of the time and place the administrative rules committee will consider the request for amendment or repeal of the rule; and
 - c. The agency and the administrative rules committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community from the amendment or repeal.

Approved April 24, 2001
Filed April 24, 2001

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 299

SENATE BILL NO. 2081

(Judiciary Committee)

(At the request of the Supreme Court)

INDIGENT DEFENSE SERVICES AND COSTS

AN ACT to amend and reenact subdivision a of subsection 3 of section 12.1-32-08 and section 29-07-01.1 of the North Dakota Century Code, relating to application fees for indigent defense services, reimbursement of indigent defense costs and expenses, and creation of an indigent defense administration fund; and to provide for a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁸ **SECTION 1. AMENDMENT.** Subdivision a of subsection 3 of section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

3. 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.

SECTION 2. AMENDMENT. Section 29-07-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹⁵⁸ Section 12.1-32-08 was also amended by section 11 of Senate Bill No. 2016, chapter 41.

29-07-01.1. Payment of expenses for defense of indigents - Reimbursement of indigent defense costs and expenses - Indigent defense administration fund - Continuing appropriation.

1. Lawyers appointed to represent ~~needy~~ indigent persons must be compensated at a reasonable rate to be determined by the court. Expenses necessary for the adequate defense of a ~~needy~~ an indigent person, when approved by the judge, must be paid by the state if the action is prosecuted in district court and by the city in which the alleged offense took place if the action is prosecuted in municipal court. The city shall also pay the expenses in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19. A defendant requesting representation by appointed counsel, or for whom appointed counsel without a request is considered appropriate by the court, shall submit an application for appointed defense services. For an application for appointed defense services in the district court, a nonrefundable application fee of twenty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.
2. A defendant with appointed counsel, subject to this subsection, shall reimburse the state or city such sums as the state or city expends on the defendant's behalf.
 - a. At the time counsel is appointed for a defendant, the appointing court shall advise the defendant of the defendant's potential obligation to reimburse the appropriate governmental entity the amounts expended on behalf of the defendant.
 - b. Within ninety days after its judgment of conviction or after conclusion of an appeal of its initial judgment of conviction, the court that appointed counsel for the defendant shall notify the defendant and the prosecuting attorney of the amount of indigent defense costs and expenses the defendant is obligated to reimburse if able to do so and of the defendant's right to a hearing on the reimbursement amount. It is a rebuttable presumption that reasonable reimbursement of costs and expenses consists of seventy-five dollars per hour for appointed counsel services plus reasonable expenses. If the defendant requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the basis for the amount to be reimbursed must be demonstrated. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.
 - c. A defendant who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the costs and expenses. If

the court is satisfied that reimbursement of the amount due will impose undue hardship on the defendant or the defendant's immediate family, the court may waive reimbursement of all or any portion of the amount due or modify the method of payment.

3. The state's attorney of the county or prosecuting attorney of the city in which the alleged offense took place, if reimbursement has not been received, shall seek civil recovery of any amounts expended on the defendant's behalf any time the state's attorney or city attorney determines the person for whom counsel was appointed may have funds to repay the state or city within six years of the date such amount was paid on that person's behalf. A person against whom civil recovery is sought under this subsection is entitled to all exemptions accorded to other judgment debtors. The state's attorney may contract with a private sector collection agency for assistance in seeking recovery of such funds. Before referring the matter to a collection agency, the state's attorney shall notify the person who is the subject of the collection action.

4. The indigent defense administration fund is a special fund in the state treasury. The state treasurer shall deposit in the fund all application fees collected under subsection 1. All moneys in the indigent defense administration fund are appropriated on a continuing basis to the judicial branch to be used in the administration of the indigent defense system and the collection of indigent defense costs and expenses required to be reimbursed under this section.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 300**SENATE BILL NO. 2077**

(Judiciary Committee)
(At the request of the Supreme Court)

POSTCONVICTION RELIEF APPEALS

AN ACT to amend and reenact section 29-32.1-14 of the North Dakota Century Code, relating to appeals to the supreme court in postconviction relief proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-32.1-14 of the North Dakota Century Code is amended and reenacted as follows:

29-32.1-14. Review. A final judgment entered under this chapter may be reviewed by the supreme court of this state upon appeal ~~filed either by the applicant within ten days or by the state within thirty days after the entry of judgment as~~ provided by rule of the supreme court.

Approved March 12, 2001
Filed March 12, 2001

UNIFORM PROBATE CODE

CHAPTER 301

SENATE BILL NO. 2075

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

PROPERTY INTEREST DISCLAIMER

AN ACT to create and enact chapter 30.1-10.1 of the North Dakota Century Code, relating to the disclaimer of property interests; to amend and reenact subsection 1 of section 47-24.1-18 of the North Dakota Century Code, relating to the disclaimer of custodian duties; and to repeal section 30.1-10-01 of the North Dakota Century Code, relating to the disclaimer of property interests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 30.1-10.1 of the North Dakota Century Code is created and enacted 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" 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. "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.
11. "Trust" means an express trust, charitable or noncharitable, with additions, whenever and however created; or a trust created pursuant to a statute, judgment, or decree under which the trust is to be administered in the manner of an express trust.

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 a spendthrift provision or similar restriction on transfer or any 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 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 an instrument other than the instrument that created the fiduciary relationship.
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.

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 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. 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 the instrument the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant predeceased the distribution date.
5. If the disclaimant is a person other than an individual and subsection 3 does not apply, the disclaimed interest passes as if the disclaimant did not exist.
6. 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, but a future interest held by the disclaimant does not accelerate in possession or enjoyment.

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 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.

30.1-10.1-05. Disclaimer of interest by trustee. If a trustee disclaims an interest in property, the interest does not become part of the trust.

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 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 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.

30.1-10.1-07. Disclaimer by appointee, object, or taker in default of exercise of power of appointment.

1. The disclaimer by the appointee 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 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.

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 and the fiduciary or fiduciaries disclaiming have the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

30.1-10.1-09. Delivery.

1. In subsections 2 through 11, delivery of a disclaimer may be accomplished 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 disclaimer to the personal representative of the decedent's estate, or if no personal representative is then serving, by filing it 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 disclaimer to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate, or if no personal representative is then serving, by filing the disclaimer with a court having jurisdiction to appoint the trustee.
4. In the case of an interest in an inter vivos trust, delivery is made by delivering the disclaimer to the trustee then serving, or if no trustee is then serving, by filing it with a court having jurisdiction to appoint the trustee, or if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, by delivering it 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 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 disclaimer 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 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 to the holder of the power or to the fiduciary acting under the instrument that created the power, or if no fiduciary is then serving, by filing it 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 personal representative of the holder's estate or to the fiduciary under the instrument that created the power, or if no fiduciary is then serving, by filing it 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 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 to the principal or the principal's representative.

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 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 or complete, of the future exercise of a power held in a fiduciary capacity is not barred by its past exercise.
4. A disclaimer, whether partial or complete, 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 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.

30.1-10.1-11. Recording of disclaimer. If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

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 in and powers 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.

SECTION 2. AMENDMENT. Subsection 1 of section 47-24.1-18 of the North Dakota Century Code is amended and reenacted as follows:

1. A person nominated under section 47-24.1-03 or designated under section 47-24.1-09 as custodian may decline to serve by delivering a valid disclaimer under ~~section 30.1-10-04~~ chapter 30.1-10.1 to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 47-24.1-03, the person who made the nomination may nominate a substitute custodian under section 47-24.1-03; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under subsection 1 of section 47-24.1-09. The custodian so designated has the rights of a successor custodian.

SECTION 3. REPEAL. Section 30.1-10-01 of the North Dakota Century Code is repealed.

Approved March 12, 2001

Filed March 12, 2001

JUDICIAL PROOF

CHAPTER 302

HOUSE BILL NO. 1208

(Representatives Klemin, Mahoney)

(Senator Watne)

DNA TESTING

AN ACT to amend and reenact section 31-13-03 of the North Dakota Century Code, relating to DNA testing; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 31-13-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

31-13-03. Persons to be tested - Costs. The court shall order any person convicted on or after August 1, 1995, of any sexual offense or attempted sexual offense in violation of sections 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, subdivision e or f of subsection 1 of section 12.1-20-07, or section 12.1-20-11 or any other offense when the court finds at sentencing that the person engaged in a nonconsensual sexual act or sexual contact with another person during, in the course of, or as a result of, the offense and any person who is in the custody of the department ~~on or after August 4~~ after July 31, 1995, as a result of a conviction of one of these offenses to have a sample of blood ~~and or~~ 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 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 ~~and or~~ 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 ~~and or~~ or other body fluids as required by this section. Any person convicted ~~on or after August 4~~ after July 31, 1995, who is not sentenced to a term of confinement shall provide a sample of blood ~~and or~~ 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 ~~must be assessed to~~ 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.

SECTION 2. GRANT APPLICATION - IMPLEMENTATION. The governor shall apply for grant funds available under the federal DNA Analysis Backlog Elimination Act of 2000 [Pub. L. 106-546; 114 Stat. 2726] and certify the offenses in section 31-13-03 as qualifying offenses. The department of corrections and

rehabilitation and the forensic science division of the state department of health shall limit the implementation of this Act to stay within funds provided by legislative appropriation and from any other public or private source.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2004, and after that date is ineffective.

Approved April 13, 2001

Filed April 16, 2001

JUDICIAL REMEDIES

CHAPTER 303

SENATE BILL NO. 2280

(Senators Wanzek, Fischer, Nichols)
(Representatives Berg, Nicholas, B. Thoreson)

CROP, LIVESTOCK, AND COMMODITY DAMAGE AWARDS

AN ACT relating to awards for the damage and destruction of crops, livestock, or commodities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Damage or destruction of crops, livestock, or commodities - Damages.

1. A person is liable for damages as provided in subsection 2 if that person willfully and knowingly damages or destroys any crop, livestock, or commodity which is being produced, or has been produced for:
 - a. Personal or commercial purposes; or
 - b. Testing or research purposes as part of a product development program in conjunction with or in coordination with a private research facility, a university, or any federal, state, or local government entity.
2. In awarding damages under subsection 1, a court shall consider the market value of the crop, livestock, or commodity before the damage or destruction and the production, research, testing, replacement, and development costs directly related to the crop, livestock, or the commodity. A person found by the court to have been damaged under this section may recover reasonable attorneys' fees, exemplary damages, and twice the market value of the crop, livestock, or commodity before the damage or destruction and twice the actual production, research, testing, replacement, and development costs. Damages to crops, livestock, or commodities under this section which are reasonably necessary under a written contract or recorded easement duly entered into by the crop, livestock, or commodity producer are not recoverable.
3. This section does not preclude or limit any other right or remedy available under law or equity.

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 304

SENATE BILL NO. 2340

(Senators Traynor, Christmann, Cook, Stenehjem)
(Representatives Porter, Weiler)

FIREARM LIMITED LIABILITY

AN ACT to limit the liability resulting from the manufacture, distribution, and sale of firearms.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Limited liability - Firearms.

1. In this section, a firearm is defined as in section 62.1-01-01.
2. A firearm manufacturer, distributor, or seller who lawfully manufactures, distributes, or sells a firearm is not liable to any person or to the estate, a successor, or survivor of any person for any injury suffered, including wrongful death and property damage, because of the use of a firearm by another.
3. An association of persons who are licensed under section 923 of title 18 of the United States Code, or amendments thereto, is not liable to any person or to the estate, a successor, or survivor of any person for any injury suffered, including wrongful death and property damage, because of the use of a firearm sold or manufactured by any licensee who is a member of the association.
4. This section does not apply to a claim for relief for deceit, breach of contract, express or implied warranty, or for injury resulting from failure of a firearm to operate in a normal or usual manner due to defects or negligence in design or manufacture. This section does not apply to a claim for relief arising from the unlawful sale or transfer of a firearm or an instance when the transferor knew or should have known that the recipient would engage in the unlawful sale or transfer of the firearm or would use or purposely allow the use of the firearm in an unlawful, negligent, or improper fashion. For the purposes of this subsection, the potential of a firearm to cause serious injury, damage, or death as a result of normal function does not constitute a defective condition of the product. A firearm may not be deemed defective on the basis of its potential to cause serious injury, damage, or death when discharged.

Approved March 22, 2001
Filed March 22, 2001

CHAPTER 305**SENATE BILL NO. 2123**

(Judiciary Committee)

(At the request of the State Department of Health)

EMERGENCY MEDICAL AID LIABILITY

AN ACT to amend and reenact section 32-03.1-05 of the North Dakota Century Code, relating to liability for providing emergency medical aid.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

32-03.1-05. Exceptions. This chapter ~~shall~~ does not encompass ~~any a~~ a person who, at the time of the emergency, was employed expressly or actually for the purpose of providing emergency medical aid to humans, either within or outside of a hospital or other place or vehicle with medical equipment, for emergency medical aid or other assistance rendered in the regular course of their employment. Such persons and their employers ~~shall be~~ are liable for their acts and omissions in rendering emergency medical aid in the regular course of their employment, according to the prevailing law in this state ~~in existence on July 1, 1987.~~

Approved March 16, 2001

Filed March 16, 2001

CHAPTER 306

HOUSE BILL NO. 1342

(Representative Keiser)

GARNISHMENT DISCLOSURE FORMS

AN ACT to amend and reenact sections 32-09.1-09, 32-09.1-14, 32-09.1-19, and 32-09.1-21 of the North Dakota Century Code, relating to garnishment disclosure forms.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

32-09.1-09. Disclosure. Within the time as limited, the garnishee shall serve upon the plaintiff or the plaintiff's attorney written answers, under oath, to the questions in the garnishment disclosure form and to any written interrogatories that are served upon the garnishee. The amount of the garnishee's disclosure need not exceed one hundred ten percent of the amount of the plaintiff's judgment which remains unpaid, after subtracting the total of setoffs, defenses, exemptions, ownerships, or other interests. The written answers may be served personally or by mail. If disclosure is by a corporation or limited liability company, it must be verified by some officer, manager, or agent having knowledge of the facts. Disclosure must state:

1. The amount of disposable earnings earned or to be earned within the defendant's pay periods which may be subject to garnishment and all of the garnishee's indebtedness to the defendant.
2. Whether the garnishee held, at the time, the title or possession of or any interest in any personal property or any instruments or papers relating to any property belonging to the defendant or in which the defendant is interested. If the garnishee admits any interest or any doubt respecting the interest, the garnishee shall set forth a description of the property and the facts concerning the property and the title, interest, or claim of the defendant in or to the property.
3. If the garnishee claims any setoff or defense or claim or lien to disposable earnings, indebtedness, or property, the garnishee shall disclose the amount and the facts.
4. Whether the defendant claims any exemption from execution or any other objection, known to the garnishee or the defendant, against the right of the plaintiff to apply upon demand the debt or property disclosed.
5. If other persons make claims to any disposable earnings, debt, or property of the defendant, the garnishee shall disclose the names and addresses of the other claimants and, so far as known, the nature of their claims.

- c. Enter on the line below the difference obtained (never less than zero) when line b is subtracted from line a. If the amount is zero, skip lines d through g and enter zero on line h.
-

- d. Enter on the line below 25 percent of line a.
-

- e. Enter on the line below the lesser of line c and line d.
-

- f. Enter on the line below the number of dependent family members living with the defendant (if properly claimed within ten days after receipt of the garnishee summons).
-

- g. Enter on the line below an amount equal to the number of dependents (line f) times twenty dollars times the number of workweeks used to compute line b.
-

- h. Enter on the line below the difference (never less than zero) when line g is subtracted from line e.
-

2. Money. Enter on the line below any amounts due and owing defendant, except earnings, from the garnishee.
-

3. Property. Describe on the line below any personal property, instruments, or papers belonging to the defendant and in the possession of the garnishee.
-

4. Setoff. ~~Enter~~ If the amount set forth on lines 1(h), 2, and 3 is zero, skip lines 5 through 8 and go to line 9. If the amount set forth on lines 1(h), 2, and 3 is more than zero, enter on the line below the amount of any setoff, defense, lien, or claim which the garnishee claims against the amount set forth on lines 1(h), 2, and 3. Allege the facts by which the setoff, defense, lien, or claim is claimed. (Any indebtedness to a garnishee-employer incurred by the judgment debtor within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)
-
-

5. Adverse Interest. Enter on the line below any amounts claimed by other persons by reason of ownership or interest in the defendant's property. State each person's name and address and the nature of that person's claim, if known. (Any assignment of wages made by the defendant within ten days before the receipt of the first garnishment on a debt is void and should be disregarded.)

6. Enter on the line below the total of lines 4 and 5.

7. Enter on the line below the difference obtained (never less than zero) when line 6 is subtracted from the sum of lines 1(h), 2, and 3.

8. Enter on the line below 110 percent of the amount of the judgment creditor's judgment which remains unpaid.

9. ~~Enter~~ If the amount set forth on lines 1(h), 2, and 3 is zero, enter zero on the line below. If the amount set forth on lines 1(h), 2, and 3 is more than zero, enter on the line below the lesser of line 7 and line 8. As garnishee, you are hereby instructed to retain this amount only if it is \$10.00 or more.

10. If this form was completed for the plaintiff for the immediately preceding pay period and the amount on line 9 was less than \$10.00, the answers to disclosure for the immediately preceding pay period remain in effect and the garnishee is not required to answer the questions in the garnishment disclosure for subsequent pay periods until the amount on line 9 is \$10.00 or more.

Signature _____
 Authorized Representative
 of Garnishee

 Title

Subscribed and sworn to before me on _____, _____.

 Notary Public

SECTION 2. AMENDMENT. Section 32-09.1-14 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-14. Default. If any garnishee who is duly summoned willfully fails to serve disclosure as required in this chapter, the court ~~may~~, upon proof by affidavit, may render judgment against the garnishee for an amount not exceeding the plaintiff's judgment against the defendant or one hundred ten percent of the amount which remains unpaid, whichever is the smaller, but the court upon good cause

shown may remove the default and permit the garnishee to disclose on terms as may be just.

SECTION 3. AMENDMENT. Section 32-09.1-19 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-19. Garnishments - Minimal amount - Disclosure. If the amount required to be retained by the garnishee is less than ten dollars, the garnishee ~~shall~~ may not retain the sum but shall make the disclosures otherwise required, except as provided in section 32-09.1-21.

SECTION 4. AMENDMENT. Section 32-09.1-21 of the 1999 Supplement to 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 hundred eighty-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 hundred eighty 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 27, 2001
Filed March 27, 2001

LABOR AND EMPLOYMENT

CHAPTER 307

SENATE BILL NO. 2226

(Senators Watne, Mutch)
(Representative N. Johnson)

EMPLOYER RETALIATION PROHIBITIONS

AN ACT to amend and reenact sections 34-01-20 and 34-11.1-04 of the North Dakota Century Code, relating to prohibited employer retaliation for employee reporting of violations of laws, ordinances, or regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-01-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-01-20. Employer retaliation prohibited - Civil action for relief - Penalty.

1. An employer may not discharge, discipline, threaten discrimination, or penalize an employee regarding the employee's compensation, conditions, location, or privileges of employment because:
 - a. The employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of federal ~~or~~₁ state, or local law, ordinance, regulation, or rule to an employer ~~or~~₁ to₁ a governmental body, or a law enforcement official.
 - b. The employee is requested by a public body or official to participate in an investigation, a hearing, or an inquiry.
 - c. The employee refuses an employer's order to perform an action that the employee believes violates local, state₁, or federal law ~~or~~₁ ordinance, rule₁, or regulation. The employee must have an objective basis in fact for that belief and shall inform the employer that the order is being refused for that reason.
2. An employer who willfully violates this section is guilty of an infraction.
3. An employee asserting a violation of this section may bring a civil action for injunctive relief or actual damages, or both, within ~~ninety~~ one hundred eighty days after the alleged violation, completion of proceedings under subsection 4, or completion of any grievance procedure available to the employee under the employee's collective bargaining agreement, employment contract, or any public employee statute, rule, or policy, whichever is later. If the court determines that a violation has or is occurring under this section, the court may order, as the court deems appropriate, reinstatement of the employee, backpay

for no more than two years after the violation, reinstatement of fringe benefits, temporary or permanent injunctive relief, or any combination of these remedies. Interim earnings or amounts earnable with reasonable diligence by the employee, from the same employer, must reduce backpay otherwise allowable. In any action under this section, the court may award reasonable attorneys' fees to the prevailing party as part of the costs of litigation. An employee whose collective bargaining agreement, employment contract, or public employee rights provides a process through which recourse for conduct prohibited by subsection 1 is available must exercise that process to completion before commencing an action under this subsection, and if that process provides for judicial review by statutory appeal, then recourse under this subsection is not available.

4. The department of labor ~~may~~ shall receive complaints of violations of this section and may attempt to obtain voluntary compliance with this section through informal advice, negotiation, or conciliation. In order to receive assistance from the department of labor, a person claiming to be aggrieved by a violation of this section ~~must~~ shall file a complaint with the department within three hundred days after the alleged act of wrongdoing. An employee is not prohibited from filing, or required to file, a complaint with the department of labor under this subsection before proceeding under other provisions of this section.

SECTION 2. AMENDMENT. Section 34-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

34-11.1-04. Violations for misuse reported by employee - Reprisals prohibited - Furnishing false information.

1. An employee may, without fear of reprisal, report in writing to their respective agency head, a state's attorney, the attorney general, or an employee organization the existence of:
 - a. A job related violation of local, state, or federal law, rule, regulation, or ordinance.
 - b. ~~A job related violation of state or federal agency rules.~~
 - e. The job related misuse of public resources.
2. For having made a report under subsection 1 no employee will:
 - a. Be dismissed from employment.
 - b. Have salary increases or employment-related benefits withheld.
 - c. Be transferred or reassigned.
 - d. Be denied a promotion ~~which~~ that the employee otherwise would have received.
 - e. Be demoted.
 - f. Be discriminated against in any term or condition of employment.

3. An employee who intentionally furnishes false information is subject to disciplinary action, including suspension or dismissal as determined by the employee's appointing authority or designee. An employee dismissed under this subsection may appeal first to the state personnel board and then to the district court in the manner prescribed by chapter 28-32, or to other appropriate offices and then to district court if the employee is not under the jurisdiction of the state personnel board.

Approved April 17, 2001

Filed April 17, 2001

CHAPTER 308

HOUSE BILL NO. 1183

(Industry, Business and Labor Committee)
(At the request of the Labor Commissioner)

EMPLOYMENT SEPARATION WAGE PAYMENT

AN ACT to amend and reenact section 34-14-03 of the North Dakota Century Code, relating to wages payable upon separation from employment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-14-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-14-03. Employees who are separated from payroll before paydays.

4. ~~Whenever an employee is discharged or terminated from employment by an employer, separates from employment voluntarily, or is suspended from work as the result of an industrial dispute, the employee's unpaid wages or compensation becomes due and payable at the regular paydays established in advance by the employer for the periods worked by the employee. When an employer discharges or terminates an employee, the unpaid wages or compensation of that employee become due immediately, and the employer shall pay those wages to the employee within fifteen days or at the next regular pay period, whichever occurs first, by certified mail at an address designated by the employee or as otherwise agreed upon by both parties. If the employer fails to pay the wages within the stated time, the employee may charge and collect wages in the sum agreed upon in the contract of employment for each day the employer is in default until the employer has paid in full, without rendering any service therefor, except the employee shall cease to draw wages or salary thirty days after such default.~~
2. ~~Whenever an employee, not having a written employment contract for a definite period, quits or resigns his employment, the wages or compensation earned become due and payable not later than the next regular stated payday.~~
3. ~~In the event of the suspension of work as the result of an industrial dispute, the wages and compensation earned and unpaid at the time of said suspension become due and payable at the next regular payday, as provided in section 34-14-02, including, without abatement or reduction, all amounts due all persons whose work has been suspended as a result of such industrial dispute, together with any deposit or other guaranty held by the employer for the faithful performance of the employee's duties.~~

Approved March 13, 2001
Filed March 13, 2001

CHAPTER 309

SENATE BILL NO. 2153

(Industry, Business and Labor Committee)
(At the request of the Labor Commissioner)

COMMISSIONER OF LABOR WAGE COLLECTION

AN ACT to amend and reenact section 34-14-09 of the North Dakota Century Code, relating to the time period during which unpaid wages may be collected by the commissioner of labor on behalf of a wage claimant.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-14-09 of the North Dakota Century Code is amended and reenacted as follows:

34-14-09. Employees' remedies - Limitation on wages collectible.

Whenever the commissioner of labor determines that wages have not been paid and that ~~such~~ the unpaid wages constitute an enforceable claim, the commissioner, upon ~~the~~ request of the employee, may take an assignment in trust for ~~such~~ the wages or ~~any~~ a claim for liquidated damages in amounts the commissioner deems valid and enforceable without being bound by any of the technical rules respecting the validity of any ~~such~~ assignments and may bring any legal action necessary to collect ~~such~~ the claim. The limitation of action under section 34-01-13 is tolled by the filing of a claim with the commissioner until the commissioner determines the claim is not enforceable or the commissioner reassigns the claim to the employee. With the consent of the assigning employee at the time of the assignment, the commissioner ~~has the power to~~ may settle and adjust ~~any~~ such the claim to the same extent as ~~might~~ the assigning employee.

Approved March 16, 2001

Filed March 16, 2001

LIENS

CHAPTER 310

HOUSE BILL NO. 1132

(Representative Klemin)

(Senator Trenbeath)

MORTGAGE RECORDATION

AN ACT to amend and reenact section 35-03-04 of the North Dakota Century Code, relating to the recordation of a mortgage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-03-04 of the North Dakota Century Code is amended and reenacted as follows:

35-03-04. Prerequisites for recordation - Post-office address of mortgagee or assignee - Description of indebtedness. ~~No~~ The register of deeds may not record a mortgage of real property may be received for record by the register of deeds unless it the mortgage contains the post-office address of the mortgagee and an adequate statement as to the amount of indebtedness and the terms of interest. ~~No~~ An assignment of a mortgage on real property which does not contain the post-office address of the assignee may not be received for record.

Approved March 12, 2001

Filed March 12, 2001

CHAPTER 311

HOUSE BILL NO. 1194

(Representative Klemin)

(Senator Trenbeath)

MORTGAGE RELEASE CERTIFICATE

AN ACT to create and enact a new section to chapter 35-03 of the North Dakota Century Code, relating to a certificate of release for a mortgage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 35-03 of the North Dakota Century Code is created and enacted as follows:

Certificate of release - Contents - Execution - Recordation.

1. As used in this section, unless the context otherwise requires:
 - a. "Mortgage" means a mortgage or mortgage lien governed by the Short-term Mortgage Redemption Act as provided in chapter 32-19.1 covering an interest in real property in this state given to secure a loan in the original principal amount of five hundred thousand dollars or less.
 - b. "Mortgagee" means the grantee of a mortgage or if a mortgage has been assigned of record, the last person to whom the mortgage has been assigned of record.
 - c. "Mortgage servicer" means the last person to whom a mortgagor or the mortgagor's successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage. A person transmitting a payoff statement is the mortgage servicer for the mortgage described in the payment statement.
 - d. "Mortgagor" means the grantor of a mortgage.
 - e. "Payoff statement" means a statement of the amount of the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per day basis for the unpaid balance.
 - f. "Record" means to record with the register of deeds.
 - g. "Title insurance company" means a corporation or other business entity authorized and licensed to transact the business of insuring titles to interests in real property in this state in accordance with chapter 26.1-20.
2. An officer or duly appointed agent of a title insurance company may execute, on behalf of a mortgagor or a person who acquired from the mortgagor title to all or a part of the property described in a mortgage, a

certificate of release that complies with the requirements of this section and record the certificate of release in the real property records of each county in which the mortgage is recorded if a satisfaction or release of the mortgage has not been executed and recorded after the date payment in full of the loan secured by the mortgage was sent in accordance with a payoff statement furnished by the mortgagee or the mortgage servicer.

3. A certificate of release executed under this section must contain substantially all of the following:
 - a. The name of the mortgagor, the name of the original mortgagee, and, if applicable, the mortgage servicer, the date of the mortgage, the date of recording, and volume and page or document number in the real property records where the mortgage is recorded, together with similar information for the last recorded assignment of the mortgage;
 - b. A statement that the mortgage was in the original principal amount of five hundred thousand dollars or less;
 - c. A statement that the person executing the certificate of release is an officer or a duly appointed agent of a title insurance company authorized and licensed to transact the business of insuring titles to interests in real property in this state;
 - d. A statement that the certificate of release is made on behalf of the mortgagor or a person who acquired title from the mortgagor to all or a part of the property described in the mortgage;
 - e. A statement that the mortgagee or mortgage servicer provided a payoff statement which was used to make payment in full of the unpaid balance of the loan secured by the mortgage; and
 - f. A statement that payment in full of the unpaid balance of the loan secured by the mortgage was made in accordance with the written or verbal payoff statement.
4. A certificate of release authorized by this section must be executed and acknowledged as required by law in the case of a deed and may be executed by a duly appointed agent of a title insurance company. The delegation to an agent by a title insurance company does not relieve the title insurance company of any liability for damages caused by its agent for the wrongful or erroneous execution of a certificate of release. The appointment of agent must be executed and acknowledged as required by law in the case of a deed and must state the title insurance company as the grantor, the identity of the person authorized to act as agent to execute and record certificates of release provided for in this section on behalf of the title insurance company, that the agent has the full authority to execute and record certificates of release provided for in this section on behalf of the title insurance company, the term of appointment of the agent, and that the agent has consented to and accepts the terms of the appointment. A single appointment of agent may be recorded in each county in each register of deeds office. A separate appointment of agent may not be necessary for each certificate of release. The appointment of agent may be rerecorded when

necessary to establish authority of the agent. The authority continues until a revocation of appointment is recorded with the register of deeds where the appointment of agent was recorded.

5. For purposes of releasing the mortgage, a certificate of release containing the information and statements provided for in this section and executed as provided in this section is prima facie evidence of the facts contained in the certificate, is entitled to be recorded with the register of deeds, and operates as a release of the mortgage described in the certificate. The register of deeds shall rely upon the certificate to release the mortgage. Recording of a wrongful or erroneous certificate of release by a title insurance company or its agent does not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations secured by the mortgage. In addition to any other remedy provided by law, a title insurance company wrongfully or erroneously recording a certificate of release under this section is liable to the mortgagee for actual damage sustained due to the recording of the certificate of release.
6. If a mortgage is recorded in more than one county and a certificate of release is recorded in one of them, a certified copy of the certificate of release may be recorded in another county with the same effect as the original. In all cases, the certificate of release shall be entered and indexed as satisfactions of mortgage are entered and indexed.

Approved March 13, 2001
Filed March 13, 2001

CHAPTER 312

HOUSE BILL NO. 1192

(Representative Klemin)

SELF-SERVICE STORAGE FACILITY LIENS

AN ACT to amend and reenact sections 35-33-05 and 35-33-06 of the North Dakota Century Code, relating to self-service storage facility liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-33-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-33-05. Notice of proceedings. Before conducting a sale, the owner shall:

1. Deliver in person or send by certified mail a notice of default to prior lienholders and to the occupant at the occupant's last-known address. A notice under this section is presumed delivered if it is deposited with the United States postal service and properly addressed with postage prepaid. The notice must include:
 - a. A statement that the contents of the occupant's leased space are subject to the ~~operator's~~ owner's lien and that the occupant is denied access to the property until the owner's claim is satisfied;
 - b. The address of the self-service storage facility, the number of the space where the personal property is located, and the name of the occupant;
 - c. A statement of the charges due, the date of default, and a demand for payment of the charges due within a specified time, not less than ten days after the date of notice;
 - d. A statement in bold type providing that, unless the claim is paid within the time stated, the contents of the occupant's leased space will be sold; and
 - e. The name, address, and telephone number of the owner or a designated agent whom the occupant may contact to respond to the notice.
2. Publish, once a week for two consecutive weeks, with the first publication not more than ~~fifteen~~ thirty days before the sale and the last publication at least seven days before the sale, the time, place, and terms of the sale in a newspaper of general circulation in the county where the self-service storage facility is located.

SECTION 2. AMENDMENT. Section 35-33-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-33-06. Sale of property - Application of proceeds. At any time before the sale, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's property. If a sale is held, the owner shall satisfy the lien from the proceeds of the sale and hold the balance, if any, for delivery on demand to the occupant or any other recorded lienholder for a period of ~~two years~~ six months from the date of sale. The owner may retain any balance unclaimed after the ~~two-year~~ six-month period.

Approved March 16, 2001

Filed March 16, 2001

LIVESTOCK

CHAPTER 313

SENATE BILL NO. 2214

(Senators Erbele, Nichols)
(Representatives Brandenburg, D. Johnson)

BOARD OF ANIMAL HEALTH MEMBERSHIP

AN ACT to amend and reenact section 36-01-01 of the North Dakota Century Code, relating to membership on 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 1999 Supplement to 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 ~~seven~~ eight members appointed by the governor for terms of seven years each with their terms of office so arranged that ~~one term;~~ two terms expire on the first day of August in one year and only one; term expires on the first day of August in each year of the next six years. No ~~person~~ individual may be appointed to more than two 7-year terms on the board.
2. Each member of ~~such~~ the board must be a qualified elector of this state. Each member of the board, immediately after ~~his~~ appointment, shall take the oath of office required of civil officers.
3. ~~One member of said~~ The members of the board must ~~be a person~~ include:
 - a. One individual who is actively engaged and financially interested in the commercial beef cattle industry and shall represent ~~said~~ the industry on ~~said~~ the board; ~~one member of said board must be a person~~
 - b. One individual who is actively engaged and financially interested in the registered purebred beef cattle industry and shall represent ~~said~~ the industry on ~~said~~ the board; ~~one member of said board must be a person~~
 - c. One individual who is actively engaged and financially interested in the dairy cattle industry and shall represent ~~said~~ the industry on ~~said~~ the board; ~~one member of said board must be a person~~

- d. One individual who is actively engaged and financially interested in the swine industry and shall represent ~~said~~ the industry on ~~said~~ the board; ~~one member of said board must be a person~~
 - e. One individual who is actively engaged and financially interested in the sheep industry and shall represent ~~said~~ the industry on ~~said~~ the board;
 - f. One individual who is actively engaged and financially interested in the bison industry and shall represent the industry on the board; and ~~two members of said board must be competent~~
 - g. Two individuals who are licensed veterinarians ~~who are graduates of a veterinary course in a recognized college or university.~~
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 ~~members~~ individuals to ~~said~~ the board as ~~constituted under this section~~ may be made to the governor by ~~the following associations for the following stated industries, to wit:~~ by the North Dakota stockmen's association for the ~~members~~ individuals representing commercial beef cattle, by the various registered purebred beef cattle associations for the ~~member~~ individual representing the registered purebred beef cattle industry, by the various dairy breed associations for the ~~member~~ individual representing the dairy cattle industry, by the North Dakota swine breeders' association for the ~~member~~ individual representing the swine industry, by the North Dakota wool growers' association for the ~~member~~ individual representing the sheep industry, by the state veterinary medical association for the two ~~veterinarian members~~ veterinarians, by the North Dakota buffalo association for the individual representing the bison industry, and by ~~such other~~ any associations within this state representing livestock industries as the governor may permit. Two recommendations must be submitted for each ~~office~~ position to be filled.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 314

SENATE BILL NO. 2152

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

INTERNET LIVESTOCK AUCTION MARKET LICENSING

AN ACT to amend and reenact sections 36-05.1-01, 36-05.1-02, 36-05.1-03, 36-05.1-04, 36-05.1-06, and 36-05.1-07 of the North Dakota Century Code, relating to adopting laws on satellite video livestock auctions to include the licensing of internet livestock auction markets.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-05.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-05.1-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Commissioner" means the agriculture commissioner.
2. "Internet livestock auction" means a place or establishment conducted or operated for compensation or profit as a public market where livestock located in this state is sold or offered for sale at a facility or web site within or outside the state through the use of the internet.
3. "Livestock" means horses, mules, cattle, swine, sheep, farmed elk, and goats.
- ~~3.~~ 4. "Representative" means a dealer licensed under chapter 36-04 who is a resident of this state or a livestock auction market licensed under chapter 36-05.
- ~~4.~~ 5. "Satellite video livestock auction market" means a place or establishment conducted or operated for compensation or profit as a public market where livestock located in this state is sold or offered for sale at a facility within or outside the state through the use of a satellite video at a public auction.

SECTION 2. AMENDMENT. Section 36-05.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-05.1-02. Satellite video livestock auction market and internet auction - Authority to transact business. No satellite video livestock auction market or internet livestock auction market may transact business in this state unless the market transacts business through a representative licensed under this chapter.

SECTION 3. AMENDMENT. Section 36-05.1-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-05.1-03. Application for license - Contents.

1. Before entering into business with a satellite video livestock auction market or internet livestock auction market and annually, on or before July first, each representative shall file an application for a license to transact business with a satellite video livestock auction market or internet livestock auction market with the commissioner on a form prescribed by the commissioner. The application must show:
 - a. The nature of the business for which a license is desired;
 - b. The name of the representative applying for the license;
 - c. The name and address of the satellite video livestock auction market or internet livestock auction market with which the applicant proposes to transact business; and
 - d. Other information the commissioner may require.
2. The application for a license or for a renewal of a license must be accompanied by:
 - a. A license fee of one hundred dollars;
 - b. Evidence the commissioner may require showing that the satellite video livestock auction market or internet livestock auction market the representative proposes to do business with is financially responsible and bonded to transact such business;
 - c. A schedule of the fees and commissions that will be charged to owners, sellers, or their agents; and
 - d. A copy of the contract between the representative and the satellite video livestock auction market or internet livestock auction market with which the representative proposes to transact business. The contract must contain a provision authorizing the commissioner or the commissioner's designee to have access to the books; papers; accounts; financial records held by financial institutions, accountants, or other sources; and other documents relating to the activities of the satellite video livestock auction market or internet livestock auction market and requiring the satellite video livestock auction market or internet livestock auction market to make such documents reasonably available upon the request of the commissioner or the commissioner's designee. The contract must also provide that the satellite video livestock auction market or internet livestock auction market and its representative are jointly and severally liable, with the right of contribution, for all business transacted within this state by the representative on behalf of the satellite video livestock auction market or internet livestock auction market. If the contract between the representative and the satellite video livestock auction market or internet livestock auction market is terminated, rescinded, breached, or otherwise materially altered, the representative and the satellite video livestock auction market or internet livestock auction market shall immediately notify the commissioner. Failure to notify the commissioner of termination, rescission, breach, or material alteration of the contract between

the representative and the satellite video livestock auction market or internet livestock auction market is deemed to be a failure to keep and maintain suitable records with the department and is deemed to be a false entry or statement of fact in an application filed with the department.

SECTION 4. AMENDMENT. Section 36-05.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-05.1-04. Use of fees - Grounds for refusal or revocation of license - Review by court. All fees collected by the commissioner under this chapter must be deposited in the general fund of the state treasury. A license may be refused or revoked for any reason specified in subdivision c or d of subsection 2 of section 36-04-04 or section 36-04-10, or if the contract required by this chapter between the representative and the satellite video livestock auction market or internet livestock auction market is extinguished, rescinded, or canceled, or is breached by either party. The action of the commissioner in denying an application for a license or revoking or suspending a license may be appealed as provided in section 36-05-13.1.

SECTION 5. AMENDMENT. Section 36-05.1-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-05.1-06. Method of payment. Payment to the seller for livestock sold through a satellite video livestock auction market or internet livestock auction market must be made in United States currency, with an instrument payable on demand drawn on a financial institution chartered and regulated by a state or the federal government, or by wire transfer or other electronic form of payment from a financial institution chartered and regulated by a state or the federal government.

SECTION 6. AMENDMENT. Section 36-05.1-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-05.1-07. Sale of livestock by weight - Scales to be inspected. Notwithstanding section 36-21-15, all livestock sold by weight through a satellite video livestock auction market or internet livestock auction market must be sold based on the weight of the livestock on the day of delivery. All livestock sold by weight must be weighed on scales that have been tested and inspected by the department of weights and measures in the manner provided by law.

Approved March 16, 2001

Filed March 16, 2001

CHAPTER 315

HOUSE BILL NO. 1322 (Representatives Disrud, Nicholas)

LIVESTOCK IDENTIFICATION

AN ACT to create and enact a new section to chapter 36-09 of the North Dakota Century Code, relating to livestock identification.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Animal identification program - Administration. The North Dakota stockmen's association shall serve as the state's administrator and allocator for that portion of any federally sponsored animal identification program which pertains to cattle, horses, and mules.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 316

SENATE BILL NO. 2347

(Senators Solberg, Erbele)
(Representatives Boehm, Gulleeson)

DISEASED ANIMAL INDEMNIFICATION

AN ACT to create and enact eight new sections to chapter 36-14 of the North Dakota Century Code, relating to indemnity for diseased animals; to amend and reenact section 36-15-08.1 of the North Dakota Century Code, relating to indemnity payments for animals diagnosed with brucellosis or bovine tuberculosis; and to repeal sections 36-15-03, 36-15-04, 36-15-06, 36-15-07, 36-15-09, and 36-15-11 of the North Dakota Century Code, relating to appraisals and condemnation of animals having brucellosis or bovine tuberculosis.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-14 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Animals" means alpaca, bison, bovine animals, farmed elk, goats, horses, llamas, sheep, swine, and nontraditional livestock.
2. "Board" means the state board of animal health.

SECTION 2. A new section to chapter 36-14 of the North Dakota Century Code is created and enacted as follows:

Notice of condemnation of diseased animal - Animal to be destroyed within fifteen days - Extension of time. Whenever any animal has been adjudged by the board to be diseased, the board or its authorized agent shall serve a written notice of its decision upon the owner or keeper of the animal before the condemned animal is killed. The animal must be destroyed within fifteen days after notice of condemnation, in either a federally inspected or state-inspected slaughtering plant, or under the supervision of an agent of the board. The fifteen-day period may be extended by the state veterinarian if the state veterinarian determines it advisable due to the circumstances involved in each case. The extension must be in writing. The notice must advise the animal's owner or keeper of that person's right to protest against the diagnosis and determination of the board within twenty-four hours after the service of the notice upon the owner or keeper. If no protest is made within that time by the owner or keeper of the condemned animal, the animal must be appraised in the manner provided in this chapter.

SECTION 3. A new section to chapter 36-14 of the North Dakota Century Code is created and enacted as follows:

Animal condemned as diseased to be appraised by board - Notice to owner.

1. Whenever any animal has been adjudged to be diseased and ordered killed by the board, the board or its authorized agent, within seven days after the entry of the order and before the animal has been killed pursuant to the order, shall determine the actual value of the animal. Notice of the appraisal must be given to the owner or keeper of the animal.
2. If an emergency is declared by the governor, the board shall conduct any appraisal required by this section and may destroy the animal as soon thereafter as is practicable. The owner may protest the appraisal, however, a protest may not delay the destruction of the animal.

SECTION 4. A new section to chapter 36-14 of the North Dakota Century Code is created and enacted as follows:

Protest of board's appraisal - Board of appraisers appointed - Appraisal to be final. Except as provided in section 3, if any individual who owns or who represents the owner of any animal ordered killed under this chapter is not satisfied with the appraisal by the board or its agents, the individual may protest the order within seven days, and a board of three appraisers must then be formed. One member of the board of appraisers must be the agent of the board, one member must be selected by the owner of the animal involved, and the third member must be selected by the first two members. An appraisal of the animal must be made by the board of appraisers according to section 7 of this Act, and if two or more of the appraisers agree upon a certain valuation, the appraisal is final.

SECTION 5. A new section to chapter 36-14 of the North Dakota Century Code is created and enacted as follows:

Fees of appraisers - How paid. Each member of the board of appraisers who is not an agent of the board is entitled to receive fifty dollars per day as compensation for services rendered, plus reimbursement for expenses as provided by law for state officers. Fifty percent of the amount due under this section is payable by the state board of animal health and the other fifty percent is payable by the owner of the animal.

SECTION 6. A new section to chapter 36-14 of the North Dakota Century Code is created and enacted as follows:

Approval of indemnity payments - Rules. If the board determines that an animal is so seriously diseased as to warrant disposal of the animal and of all other exposed animals, the board may approve indemnity payments, as funds are appropriated, on the animals in accordance with the limits set in section 7 of this Act. The board may adopt rules governing indemnity payments under this chapter.

SECTION 7. A new section to chapter 36-14 of the North Dakota Century Code is created and enacted as follows:

Return of appraisal - Payment of claims for diseased animals. The return of an appraisal under this chapter must be in writing and signed by the board or by the board's agent who made the appraisal, or by the members of the board of appraisers if a reappraisal is made after a protest, and by the owner of the condemned animal. The return must be certified by the agriculture commissioner to the office of management and budget. The office of management and budget shall issue a check jointly to the owner and any lienholders of the animal. The amount of indemnity paid by this state to the owner of a diseased animal may not exceed five

thousand dollars per animal less any amount obtained by the owner through insurance, federal indemnity payments, or salvage payments. This state is not liable for indemnity under this chapter in excess of the amount approved by the emergency commission for the payment of the indemnity.

SECTION 8. A new section to chapter 36-14 of the North Dakota Century Code is created and enacted as follows:

Owner of diseased animals - No indemnification - Circumstances. The right of the owner of a diseased animal to be indemnified does not exist and the board may not authorize payment if:

1. The animal belongs to the United States, to this state, or to any political subdivision of this state.
2. The owner at the time of coming into possession of the animal knew or suspected it to be diseased.
3. The animal was found to have been clinically diseased at the time of its arrival in this state.
4. The owner is a nonresident and not engaged in the breeding of livestock in this state.
5. The animal at the time of its killing had been in this state for less than six months.
6. The owner of an animal willfully exposed the animal to the disease.
7. The owner violated any law or any rule of the board.

SECTION 9. AMENDMENT. Section 36-15-08.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-15-08.1. Owner entitled to compensation for animals infected
Animals with brucellosis or bovine tuberculosis - Board may make rules
Compensation - Rules governing payments. ~~When, in the discretion and judgment of~~ If the board, determines that an animal is so seriously infected with brucellosis or bovine tuberculosis as to warrant disposal of the animal and of all other exposed animals, the board ~~is hereby authorized to~~ may approve indemnity payments, as funds are appropriated, ~~or for~~ for the animals in accordance with the limits set ~~forth~~ forth in section ~~36-15-09~~ 7 of this Act. The board may ~~make reasonable~~ adopt rules governing ~~the payment of such compensation within the limits prescribed in~~ indemnity payments under this chapter.

¹⁵⁹ **SECTION 10. REPEAL.** Sections 36-15-03, 36-15-04, 36-15-06, 36-15-07, 36-15-09, and 36-15-11 of the North Dakota Century Code are repealed.

Approved April 27, 2001
Filed April 27, 2001

¹⁵⁹ Section 36-15-06 was amended by section 4 of House Bill No. 1104, chapter 122.

CHAPTER 317

SENATE BILL NO. 2300

(Senators Lyson, Nichols)
(Representatives Onstad, Solberg)

ABANDONED ANIMAL CUSTODY

AN ACT to create and enact three new sections to chapter 36-21.1 of the North Dakota Century Code, relating to the custody of abandoned animals; and to amend and reenact sections 36-21.1-01 and 36-21.1-06 of the North Dakota Century Code, relating to the abandonment and exposure of animals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-21.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-21.1-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Abandoned animal" means an animal that is or reasonably appears to have been deserted by its owner or keeper. The term may include an animal that is running loose on property other than that of its owner or the owner's agent if the animal bears no identification indicating the owner or the owner's agent and the owner or owner's agent is not known to the sheriff, police officer, licensed veterinarian, or investigator taking custody of the animal under this chapter.
- ~~2.~~ "Animal" includes every living animal except the human race.
- ~~2.~~ 3. "Commissioner" means the agriculture commissioner of agriculture.
- ~~3.~~ 4. "Cruelty" or "torture" includes every act, omission, or neglect whereby unnecessary or unjustifiable pain, suffering, or death is caused or permitted.
- ~~4.~~ 5. "Investigator" means any person approved by the board to determine whether there has been a violation of this chapter.

SECTION 2. AMENDMENT. Section 36-21.1-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

36-21.1-06. Exposure of animals - Authority of officers.

1. Any sheriff, police officer, licensed veterinarian, or investigator may take custody of, and care for any animal ~~found abandoned,~~ unjustifiably exposed to cold or inclement weather, or not properly fed and watered. Any sheriff or police officer may use reasonable means to enter a motor vehicle and remove an animal that has been left in the vehicle in violation of section 36-21.1-03.1.
2. A sheriff, police officer, licensed veterinarian, or investigator may care for the animal until it is redeemed by the owner or authorized agent of

the owner and when necessary may deliver the animal to another person or facility to be sheltered, cared for, and furnished suitable food and drink.

3. ~~In all cases~~ If the owner, if or the owner's agent is known, the individual must be immediately notified, or if. If the owner or the owner's agent is unknown, notice must be given by publication in the manner prescribed by law. ~~Such~~ The notice must inform the owner or the owner's agent that such the animal may be sold, or otherwise disposed of, pursuant to court order if the animal is not redeemed within five days after receiving from the date of the notice or after publication.
- ~~2.~~ 4. The sheriff, police officer, licensed veterinarian, investigator, or whoever has custody of the animal has a lien ~~thereon,~~ on the animal and that lien is superior to any other claim or lien, for ~~its~~ the animal's care and keeping, the reasonable value of the food and drink furnished, and the expenses of notifying the owner or the owner's agent. If ~~such~~ the lien is not discharged and satisfied by the owner or the owner's agent within five days after receipt of the notice, the person holding ~~such~~ the claim may apply to the district court for an order to sell ~~such~~ the animal ~~to~~ and discharge ~~such~~ the lien.
5. Upon order of the court, the animal ~~must~~ may be sold at a public market to pay the charges for its keeping ~~the same,~~ and the title to the animal passes by the sale.
6. The court may award costs and reasonable attorney's fees to the person bringing the action to enforce the lien, and the remainder, if any, must be paid over to the owner, if known, or if the owner is not known, the remainder must be deposited in the county general fund. If no purchaser is found, the animal, at the discretion of the commissioner, may be offered arrange for the adoption of the animal, or disposed of consistent with this chapter or with any other provision of law arrange for the destruction and disposal of the animal if no market exists for the animal or if the animal is a companion animal.
7. If the animal is sold, the lienholder is entitled to the proceeds of the sale to the extent of the lien and the remainder, if any, must be paid over to the owner or the owner's agent, if known. If the owner or the owner's agent is not known, the remainder must be deposited in the county general fund. If no purchaser is found, the animal, at the discretion of the commissioner, may be offered for adoption or disposed of consistent with the law.
8. Before the animal is returned to its owner, the court shall determine whether the owner or the owner's agent can provide adequate care for the animal. The court has ten days within which to make this determination. The owner shall pay the cost of taking the animal into custody before the animal is released to the owner or the owner's agent.

SECTION 3. A new section to chapter 36-21.1 of the North Dakota Century Code is created and enacted as follows:

Abandoned animals - Assumption of custody.

1. Any sheriff, police officer, licensed veterinarian, or investigator may take custody of and care for any animal found abandoned. The individual taking custody shall take reasonable steps to determine the ownership of the abandoned animal.
2. A sheriff, police officer, licensed veterinarian, or investigator may care for the animal until the animal is redeemed by the owner or the owner's agent or may deliver the animal to another person or facility to be sheltered, cared for, and furnished suitable food and drink.
3. Notice must be given by publication in the official newspaper of the jurisdiction. The notice must provide that the animal may be sold, placed for adoption, or otherwise disposed of if the animal is not redeemed within five days from the date of the notice.
4. The person having custody of the animal has a lien on the animal for the animal's care and keeping, the reasonable value of the food and drink furnished, and the expenses of notifying the owner or the owner's agent. The lien is superior to any other claim or lien. If the lien is not discharged and satisfied by the owner or the owner's agent within five days after publication of the notice, the person holding the claim may sell the animal and discharge the lien.
5. The court may award reasonable attorney's fees to the person bringing the action to enforce the lien and may award costs, which include the costs of arranging for the adoption of the animal or the costs of the destruction and disposal of the animal.
6. If the animal is sold, the lienholder is entitled to the proceeds of the sale to the extent of the lien and the remainder, if any, must be deposited in the county general fund.

SECTION 4. A new section to chapter 36-21.1 of the North Dakota Century Code is created and enacted as follows:

Assumption of custody - Immunity from liability. Any sheriff, police officer, licensed veterinarian, investigator, or person who has custody of an animal under this chapter and who is acting in an official or professional capacity and making a good-faith effort to comply with this chapter is immune from any civil or criminal liability for acts taken or omitted while attempting to comply with this chapter.

SECTION 5. A new section to chapter 36-21.1 of the North Dakota Century Code is created and enacted as follows:

Applicability of chapter. This chapter does not apply to estrays covered under chapter 36-22.

Approved April 17, 2001
Filed April 17, 2001

CHAPTER 318

SENATE BILL NO. 2404

(Senators Erbele, Kroeplin)

(Representatives Kretschmar, Maragos)

ANIMAL USE AS RAFFLE PRIZE

AN ACT to amend and reenact subsection 2 of section 36-21.1-09 of the North Dakota Century Code, relating to the use of animals as raffle prizes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 36-21.1-09 of the 1999 Supplement to 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 ~~if, bison, sheep, and pigs, provided~~ each raffle ticket contains a statement that the winner of the ~~beef or dairy cattle prize animal~~ animal may convert that prize to a cash prize. The donor of the ~~beef or dairy cattle prize animal~~ shall determine the amount of the cash prize, which must be equivalent to the value of the ~~beef or dairy cattle prize animal~~ animal and cannot exceed the limitations of section 53-06.1-10.1.

Approved March 21, 2001

Filed March 21, 2001

MILITARY

CHAPTER 319

SENATE BILL NO. 2283

(Senators Bercier, Heitkamp, Nichols)
(Representatives Boucher, Cleary, Winrich)

ARMED FORCES DISCHARGE PAPER RECORDATION

AN ACT to amend and reenact section 37-01-34 of the North Dakota Century Code, relating to the recordation of armed forces discharge papers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-34 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-01-34. Recordation of discharge papers. ~~These~~ An individual discharged from ~~the national guard, the army, the marine corps, and other branches~~ any branch of the armed forces of the United States may record, without payment of any fee, ~~their discharges~~ that individual's discharge from ~~such~~ the armed forces, a certificate issued in lieu ~~thereof~~ of the discharge, duly authenticated and certified copies ~~thereof~~ of the discharge or certificate, or duly certified records of ~~their~~ that individual's service and discharge from ~~such~~ the armed forces in the office of the register of deeds of the county in which ~~they reside~~ that individual resides, unless the board of county commissioners designates a different official. Any discharge document recorded by the register of deeds, or designated official, may be made available only to the following persons: the veteran, the parents, the veteran's next of kin, the veteran's legal representative, a county veterans' service officer, a veterans' organization service officer, the department of veterans' affairs, or a designee of the veteran.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 320

SENATE BILL NO. 2284

(Senators Bercier, Heitkamp, Nichols)
(Representatives Boucher, Cleary, Winrich)

WARTIME VETERAN SERVICE DATES

AN ACT to amend and reenact section 37-01-40 of the North Dakota Century Code, relating to the uniform service dates for wartime veterans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-40 of the North Dakota Century Code is amended and reenacted as follows:

37-01-40. "Veteran" and "wartime veteran" defined - Uniform service dates for wartime veterans.

1. A "veteran" is a person who has served on continuous federalized active military duty for twenty-four months or the full period for which the person was called or ordered to active military duty, whichever is shorter, and who was discharged or released therefrom under other than dishonorable conditions. A discharge reflecting "expiration of term of service" or "completion of required service" or words to that effect qualifies the shorter term of service as making the person a veteran.
2. A "wartime veteran" is a person who served in the active military forces, during a period of war or who received the armed forces expeditionary or other campaign service medal during an emergency condition and who was discharged or released therefrom under other than dishonorable conditions. "Wartime veteran" also includes a person who died in the line of duty in the active military forces, as determined by the armed forces.
3. ~~In order to provide for the uniformity of period of service dates for wartime veterans, the following dates and terms are applicable to all acts of the state relative to wartime veterans where not otherwise specifically prescribed by statute:~~
 - a. ~~Civil war and confederate veterans who served between April 12, 1861, and May 26, 1865.~~
 - b. ~~Future dates. The period beginning on~~ Period of service dates for a wartime veteran begins with the date of any future declaration of war by the Congress of the United States or the beginning of an emergency condition recognized by the issuance of a presidential proclamation or a presidential executive order and in which the armed forces expeditionary medal or other campaign service medals are awarded according to presidential executive order and ending on a date prescribed by presidential proclamation or concurrent resolution of the Congress of the United States; and dates determined by the United States department of defense.

- e. Indian wars. Since the Indian wars were fought intermittently over a period of years, the determination as to whether a person shall be considered as having rendered military service during these wars will be carefully considered by the administrative committee on veterans' affairs. January 1, 1817, through December 31, 1898, is considered Indian war period.
- d. "Korean conflict" means the period between June 27, 1950, to January 31, 1955.
- e. Mexican wars. Since there were several skirmishes involving the Mexican border, such as Mexican border troubles 1911-1916; Veracruz expedition April 21, 1914, to November 26, 1914; punitive expedition into Mexico, March 15, 1916, to February 5, 1917; therefore the persons rendering military service in any of these skirmishes must be considered veterans of the Mexican wars between 1914 and February 5, 1917.
- f. "Spanish-American War" (1) means the period beginning on April 21, 1898, and ending on July 4, 1902, (2) includes the Philippine insurrection and the Boxer rebellion, and (3) in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro province, means the period beginning on April 21, 1898, and ending on July 15, 1903.
- g. "Vietnam era" means the period beginning August 5, 1964, and ending on May 7, 1975.
- h. "World War I" (1) means the period beginning on April 6, 1917, and ending on November 11, 1918, and (2) in the case of a veteran who served with the United States military forces in Russia, means the period beginning on April 6, 1917, and ending on April 1, 1920.
- i. "World War II" means the period beginning December 7, 1941, and ending December 31, 1946, both dates inclusive.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 321

HOUSE BILL NO. 1374 (Representatives R. Kelsch, Mueller) (Senators Freborg, O'Connell)

VETERANS' HONORARY HIGH SCHOOL DIPLOMAS

AN ACT relating to honorary high school diplomas for veterans; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Honorary high school diplomas - Veterans of World War II.

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. 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. The school district and the superintendent of public instruction shall review and either approve or deny each application received.
4. If a veteran who would have qualified for a diploma under this Act is deceased, a family member of the veteran may apply for and, if approved, be awarded the veteran's honorary high school diploma.

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

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 322

HOUSE BILL NO. 1271

(Representatives DeKrey, Brandenburg, Metcalf)

ADJUTANT GENERAL'S OFFICE

AN ACT to amend and reenact sections 37-02-06 and 37-03-02 of the North Dakota Century Code, relating to the adjutant general's office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-02-06 of the North Dakota Century Code is amended and reenacted as follows:

37-02-06. Staff of governor.

1. The staff of the governor consists of:
 4. a. The adjutant general who ~~shall be~~ is the chief of staff and ~~shall~~ must hold the rank of brigadier general; ~~provided that in the event of.~~ However, if an officer having a total of twenty years or more commissioned service in the armed forces he shall, the adjutant general must hold the grade rank of major general.
 2. b. An assistant adjutant general for ~~the department of the army~~ who ~~shall~~ must hold a rank consistent with ~~his~~ that individual's length of service and federal laws and regulations, but not to exceed the rank of brigadier general.
 3. c. An assistant adjutant general for ~~the department of the air force~~ who ~~shall~~ must hold a rank consistent with ~~his~~ that individual's length of service and federal laws and regulations, but not to exceed the rank of brigadier general.
 4. ~~Not more than two assistant adjutants general to administer the military records or perform other duties as may be assigned to the adjutant general by law or the governor.~~
 5. ~~Repealed by S.L. 1965, ch. 181, § 33.~~
 - d. Other assistant adjutants general authorized by a table of organization prescribed by the laws or regulations of the United States or laws of this state who must hold a rank consistent with length of service and federal laws and regulations, but not to exceed the rank of brigadier general.
2. The governor shall deputize one of the assistant adjutant generals to serve as deputy adjutant general. The deputy has all the powers and duties of the adjutant general, except in instances where authority has been restricted by the adjutant general, and shall serve as acting adjutant general in case of the absence or inability of the adjutant general.

SECTION 2. AMENDMENT. Section 37-03-02 of the North Dakota Century Code is amended and reenacted as follows:

37-03-02. Assistant adjutants general - Appointment - Qualifications - Duties. An assistant adjutant general for army, ~~and an assistant adjutant general for air force,~~ and other assistant adjutants general authorized by a table of organization prescribed by the laws or regulations of the United States, may be appointed by the governor upon the recommendation of the adjutant general. ~~At the time of his appointment, each~~ Each assistant adjutant general ~~for army or for air force~~ must have had not less than five years' ~~military commissioned~~ service in the ~~armed forces of this state or of the United States,~~ must have held a commission in the armed forces of this state or of the United States for at least three years, North Dakota national guard immediately preceding the appointment and must have attained the rank of ~~captain in the national guard of this state~~ lieutenant colonel. Upon his appointment, each assistant adjutant general ~~for army or for air force shall~~ must have ~~such~~ the rank as is consistent with federal laws and regulations. The assistant adjutant general for army and the assistant adjutant general for air force ~~shall~~ respectively have general supervision over the training of the troops and the administration of the affairs of their respective departments. ~~The governor shall deputize an assistant adjutant general to serve as deputy adjutant general and such deputy, regardless of rank, shall have all of the powers and duties of the adjutant general, except in such instances where his authority has been restricted by the adjutant general, and he shall serve as acting adjutant general in case of absence of the adjutant general or his inability to act.~~ An assistant adjutant general for the department of military records may be appointed by the governor upon recommendation of the adjutant general from among the active or retired officers of the North Dakota national guard. The assistant adjutant general for military records ~~shall~~ must have ~~such~~ the rank as is consistent with ~~his~~ experience and length of service.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 323

HOUSE BILL NO. 1180

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

ADJUTANT GENERAL PROPERTY LEASE OR VACATION

AN ACT to amend and reenact section 37-10-03.2 of the North Dakota Century Code, relating to the authority of the adjutant general to lease or vacate property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-10-03.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-10-03.2. Exchange, sale, and lease of military lands. The adjutant general may exchange with or sell to any person lands owned by the state of ~~North Dakota~~ and used for military purposes ~~with other agencies of the state, counties, municipalities or other political subdivisions, corporations, limited liability companies, or individuals,~~ and may purchase, within funds available, parcels of land necessary for the construction of armories or the expansion of present military installations in the state of ~~North Dakota~~. Sales must be made under the provisions of sections 54-01-05.1 and 54-01-05.2 and all net proceeds of sales must be placed in the national guard training area and facility development trust fund. The adjutant general may lease parts of military installations to ~~the department of defense or other agencies of the federal government~~ any person. Land originally acquired from a county, city, or political subdivision for nominal consideration may be vacated by the adjutant general and conveyed back to the county, city, or political subdivision when the land is no longer necessary for military purposes.

Approved February 16, 2001
Filed February 16, 2001

CHAPTER 324

SENATE BILL NO. 2260

(Senators Dever, C. Nelson, Wardner)
(Representatives Cleary, Haas, Kroeber)

VETERANS' LOANS AND APPEALS

AN ACT to amend and reenact sections 37-14-06 and 37-14-12 of the North Dakota Century Code, relating to loans from the veterans' aid fund and appeals from the department of veterans' affairs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-14-06 of the 1999 Supplement to 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 ~~two~~ five thousand dollars.

SECTION 2. AMENDMENT. Section 37-14-12 of the North Dakota Century Code is amended and reenacted as follows:

37-14-12. Decision of department ~~final~~ appealable. ~~The department of veterans' affairs has full and sole power, authority, and jurisdiction over the granting or refusal of applications~~ may grant or refuse an application for relief or assistance from the veterans' aid fund financial assistance programs under the control of the department under policies set by the administrative committee on veterans' affairs, and all of its. ~~The committee shall adopt and establish an appeal process. The department's decisions are final~~ appealable to an appeals committee appointed by the chairman of the administrative committee, and the decision of the committee is final.

Approved March 14, 2001
Filed March 14, 2001

MINING AND GAS AND OIL PRODUCTION

CHAPTER 325

SENATE BILL NO. 2099

(Natural Resources Committee)
(At the request of the Industrial Commission)

OIL AND GAS AND SUBSURFACE MINERAL REGULATION

AN ACT to amend and reenact subsection 3 of section 38-08-04.5, section 38-08-21, and subsection 7 of section 38-12-01 of the North Dakota Century Code, relating to the abandoned oil and gas well plugging and site reclamation fund, control of gas and oil resources, and subsurface mineral regulation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 38-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

3. All moneys collected under this section must be deposited in the abandoned oil and gas well plugging and site reclamation fund. This fund must be maintained as a special fund and all moneys transferred into the fund are hereby appropriated and must be used and disbursed solely for the purpose of defraying the costs incurred in carrying out the plugging or replugging of wells, the reclamation of well sites, and all other related activities. However, when the ~~money~~ fees accumulated in the fund exceeds fifty thousand dollars, any additional fees collected by the oil and gas division of the industrial commission must be deposited in the general fund.

SECTION 2. AMENDMENT. Subsection 3 of section 38-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

3. All moneys collected under this section must be deposited in the abandoned oil and gas well plugging and site reclamation fund. This fund must be maintained as a special fund and all moneys transferred into the fund are hereby appropriated and must be used and disbursed solely for the purpose of defraying the costs incurred in carrying out the plugging or replugging of wells, the reclamation of well sites, and all other related activities. However, when the ~~money~~ fees accumulated in the fund ~~exceeds~~ exceed two hundred fifty thousand dollars, any additional fees collected by the oil and gas division of the industrial commission must be deposited in the general fund.

SECTION 3. AMENDMENT. Section 38-08-21 of the North Dakota Century Code is amended and reenacted as follows:

38-08-21. Regulation of carbon dioxide and nitrogen gas. The commission is hereby vested with the authority and duty to regulate the exploration, development, and production of carbon dioxide, coal bed methane gas, helium gas, and nitrogen gas within the state, ~~used for the development of oil and gas resources,~~ in the same manner, insofar as is practicable, as it regulates oil or gas as defined in this chapter.

SECTION 4. AMENDMENT. Subsection 7 of section 38-12-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of boron, bromine, calcium, fluorine, ~~helium,~~ iodine, lithium, magnesium, ~~nitrogen,~~ phosphorus, potassium, sodium, thorium, uranium, and sulfur, and their compounds, but does not include sand and gravel and rocks crushed for sand and gravel.

SECTION 5. EFFECTIVE DATE. Section 2 of this Act becomes effective on July 1, 2003.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 326

SENATE BILL NO. 2120

(Natural Resources Committee)
(At the request of the Attorney General)

OIL AND GAS UNIT DISSOLUTION AND RATIFICATION

AN ACT to amend and reenact subsection 7 of section 38-08-09.4 and section 38-08-09.5 of the North Dakota Century Code, relating to dissolution of units and to the industrial commission's oversight of the creation of units for the further development of oil and gas and changing ratification requirements for these units.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁰ **SECTION 1. AMENDMENT.** Subsection 7 of section 38-08-09.4 of the North Dakota Century Code is amended and reenacted as follows:

7. The time when and conditions under which and the method by which the unit ~~shall~~ must or may be dissolved and its affairs wound up; however, the unit may be dissolved ten years after the unit agreement becomes effective upon a petition to the commission by the royalty owners who are credited with at least eighty percent of the production and proceeds thereof or for units established after the effective date of this Act, upon a petition to the commission by the royalty owners who are credited with at least sixty percent of the production and proceeds thereof, and a subsequent hearing and order by the commission. The commission may not dissolve any unit if the dissolution would be likely to result in waste or the violation of the correlative rights of any owner. This provision does not limit or restrict any other authority which the commission has.

SECTION 2. AMENDMENT. Section 38-08-09.5 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

38-08-09.5. Ratification or approval of plan by lessees and owners. At the time of filing of the petition for the approval of a unit agreement and the filing of the unit agreement, the commission shall ~~set a time and place for the~~ schedule a hearing. At least forty-five days prior to the hearing, the applicant ~~or someone under his direction and control~~, shall give notice of the ~~time and place of said~~ hearing and shall mail, postage prepaid, a copy of the application and the proposed plan of unitization to each affected person owning an interest of record in the unit outline, at such person's last-known post-office address. In addition, ~~such the~~ applicant shall file with the commission engineering, geological, and all other technical exhibits to be used at ~~said the~~ hearing, and further, the notice must ~~se~~ specify that such material is filed and is available for inspection. Service is complete in the mailing of

¹⁶⁰ Section 38-08-09.4 was also amended by section 10 of House Bill No. 1049, chapter 55.

the notice of hearing and unit agreement to each interest owner as ~~hereinbefore prescribed at his last known address described in this section~~ and the filing of an affidavit of mailing with the commission. No order of the commission creating a unit and prescribing ~~the its~~ plan of unitization ~~applicable thereto~~ becomes effective ~~unless and~~ until the plan of unitization has been signed, or in writing ratified or approved by those persons who, under the commission's order, will be required to pay at least ~~seventy~~ sixty percent of the costs of the unit operation and ~~also~~ by the owners of at least ~~seventy~~ sixty percent of the royalty interests ~~under the commission's order~~, excluding overriding royalties, production payments, and other interests carved out of the working interest, and in addition it ~~shall be~~ is required that when there is more than one person who will be obligated to pay costs of the unit operation, at least two nonaffiliated such persons and at least two royalty interest owners, ~~shall be~~ are required as voluntary parties, and the commission has made a finding either in the order creating the unit or in a supplemental order that the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest ~~in and to the unit area~~. Where the plan of unitization has not been ~~so~~ signed, ratified, or approved by lessees and royalty owners owning the required percentage interest ~~in and to the unit area~~ at the time the order creating the unit is made, the commission shall, upon petition and notice, hold such additional ~~and supplemental~~ hearings as may be requested or required to determine if and when the plan of unitization has been so signed, ratified, or approved by lessees and royalty owners owning the required percentage interest ~~in and to the unit area~~ and shall, in respect to such hearings, ~~make and~~ enter a finding of its determination in such regard. In the event lessees and royalty owners, or either, owning the required percentage interest ~~in and to the unit area~~ have not ~~so~~ signed, ratified, or approved the plan of unitization within a ~~period of~~ six months from ~~and after~~ the date on which the order creating the unit is made, the order ~~creating the unit~~ ceases to be of further force and effect and shall be revoked by the commission.

Approved April 10, 2001
Filed April 10, 2001

MOTOR VEHICLES

CHAPTER 327

SENATE BILL NO. 2363

(Senators G. Nelson, Krauter)
(Representatives Belter, Boucher)

POLITICAL ACTIVITY EXPENSE REIMBURSEMENT PROHIBITED

AN ACT to amend and reenact section 39-01-05 of the North Dakota Century Code, relating to the prohibition on expense reimbursement by state officers and employees while engaged in political activity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-01-05 of the North Dakota Century Code is amended and reenacted as follows:

39-01-05. Expenses not to be collected by state officers or employees engaged in political activity. ~~No A state officer or employee of this state, or of any department, board, bureau, commission, institution, industry, or other agency thereof, who uses or drives any privately owned motor vehicle while engaged in political activity, may not collect or receive, directly or indirectly, from this state, or any department, board, bureau, commission, institution, industry, or other agency thereof, any expense moneys whatsoever for the use or operation of any such the motor vehicle on any day on which such political work was done, and no such while engaged in the political activity. A state officer or public employee may not collect or receive any traveling expense reimbursement from this state, or any department, board, bureau, commission, institution, or other agency thereof for any time spent engaging in any political activity.~~

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 328**SENATE BILL NO. 2289**
(Senators Freborg, Heitkamp, Solberg)
(Representative Wrangham)**MOBILITY-IMPAIRED PARKING SPACES**

AN ACT to create and enact a new subsection to section 39-01-15 of the North Dakota Century Code, relating to parking spaces for mobility-impaired individuals; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-01-15 of the North Dakota Century Code is created and enacted as follows:

An entity that violates the requirements of subsection 9 is guilty of an infraction if the entity does not comply with subsection 9 within sixty days after receiving official notification of the violation.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 329

HOUSE BILL NO. 1185

(Transportation Committee)

(At the request of the Department of Transportation)

MOTOR VEHICLE REGISTRATION AND TITLING

AN ACT to amend and reenact section 39-01-16, subdivision b of subsection 2 of section 39-04-18, and subdivision a of subsection 1 of section 39-05-05 of the North Dakota Century Code, relating to motor vehicle registration and titling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-01-16 of the North Dakota Century Code is amended and reenacted as follows:

39-01-16. Hearing on alleged violations. Any person having information that a licensed dealer has violated any provisions of this title may file with the director an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the director shall investigate the violation alleged in the affidavit. If, after investigation, the director determines that the dealer's license will be revoked or suspended, a notice of intent to revoke or suspend the license must be mailed to the dealer by ~~registered~~ certified mail. The notice must provide the dealer with an opportunity for a hearing prior to the effective date of the license revocation or suspension. A record of such hearings must be made by stenographic notes or use of an electronic recording device.

If after such hearing the director finds the violation charged in the affidavit has been proved by the evidence, an order must be served on the licensee revoking or suspending the dealer's license for a period of time to be determined by the director. Such action may be appealed to the district court by following the appeal procedure set forth in chapter 28-32, except that the order revoking or suspending the license is ineffective while the appeal is pending.

The director has the power to appoint an administrative hearing officer to conduct the hearing, administer oaths, and subpoena and examine witnesses. The administrative hearing officer shall submit the findings to the director for consideration and final decision.

Any witness called by the prosecution, except a peace officer while on duty, shall receive the same fees and mileage as a witness in a civil case in district court.

¹⁶¹ **SECTION 2. AMENDMENT.** Subdivision b of subsection 2 of section 39-04-18 of the North Dakota Century Code is amended and reenacted as follows:

¹⁶¹ Section 39-04-18 was also amended by section 1 of House Bill No. 1325, chapter 334.

- b. Motor vehicles owned by or in possession of Indian mission schools, by this state or any of its agencies, departments, or political subdivisions, including school districts possessing a motor vehicle or vehicles used for driver education instruction, or by any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world; provided, however, that the vehicles must display license plates provided by the department at actual cost. Upon request, qualifying law enforcement motor vehicles must be issued a license plate under section 39-04-10.9.

Each motor vehicle loaned or furnished by a licensed North Dakota motor vehicle dealer to a school district in North Dakota to be used exclusively for instructing pupils in the driver education and training program conducted by the school district will be assigned an official license plate ~~bearing a decal with the words "driver education" appearing on it.~~ The license plates must be used only on the motor vehicles furnished by dealers and used in the driver education program, and for no other purpose except for garaging and safekeeping of the motor vehicle.

~~No~~ A person may not use a driver education motor vehicle bearing official license plates ~~bearing a decal with the words "driver education" appearing on it as provided for in this subdivision~~ for any purpose other than driver education course instruction. ~~No~~ A person is not in violation of this subdivision if the person is required by the dealer or a school administrator to house or otherwise protect the vehicle at the person's home or other facility.

SECTION 3. AMENDMENT. Subdivision a of subsection 1 of section 39-05-05 of the North Dakota Century Code is amended and reenacted as follows:

- a. A full description of the vehicle, including the name of the manufacturer, either the engine, serial, or identification number, and any other distinguishing marks. The department may assign a vehicle identification number for a vehicle not otherwise assigned a number. The assigned number must be permanently affixed to the vehicle and the department may require the vehicle be inspected before issuing a certificate of title for the vehicle.

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 330

SENATE BILL NO. 2084

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

HIGHWAY PATROLMEN'S RETIREMENT SERVICE AND BENEFITS

AN ACT to create and enact a new section to chapter 39-03.1 of the North Dakota Century Code, relating to the purchase of additional service credit under the highway patrolmen's retirement system; to amend and reenact subdivisions a and d of subsection 4 of section 39-03.1-11 and subsection 6 of section 39-03.1-11 of the North Dakota Century Code, relating to computation of benefits, postretirement adjustments, and beneficiaries under the highway patrolmen's retirement system; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

Purchase of additional service credit.

1. 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 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 39-03.1-11 and to enable the contributor to qualify for the normal retirement date defined by subdivision b of subsection 3 of section 39-03.1-11.
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.

SECTION 2. AMENDMENT. Subdivisions a and d of subsection 4 of section 39-03.1-11 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- a. Normal retirement benefits for all contributors reaching the normal retirement date are payable monthly, and are:
 - (1) The first twenty-five years of credited service multiplied by three and ~~forty~~ sixty hundredths percent of final average salary.
 - (2) All years in excess of twenty-five years of credited service multiplied by one and three-fourths percent of final average salary.
 - (3) All contributors who retired before August 1, ~~1999~~ 2001, or their beneficiaries, are entitled to receive benefits equal to three and ~~forty~~ sixty hundredths percent of final average salary multiplied by the first twenty-five years of credited service, plus one and three-fourths percent of final average salary multiplied by credited service in excess of twenty-five years, with the increased benefits payable beginning August 1, ~~1999~~ 2001.

- d. Disability retirement benefits are ~~seventy percent of the contributor's final average salary, reduced by any workers' compensation benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.~~ payable monthly and are:
 - (1) Seventy percent of the contributor's final average salary, reduced by any workers' compensation benefits paid. The minimum monthly disability retirement benefit under this subsection is one hundred dollars.
 - (2) An individual or that person's beneficiary who, on July 31, 2001, is receiving a disability retirement benefit is entitled to receive an increase in benefits equal to six percent of the individual's present benefits, with the increase payable beginning August 1, 2001.

SECTION 3. AMENDMENT. Subsection 6 of section 39-03.1-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. If before retiring a contributor dies after completing ten years of eligible employment, the board shall pay the contributor's accumulated deductions to the contributor's ~~surviving spouse. However, if there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing, the board shall pay the contributor's account balance to the contributor's beneficiary or, if there is no named beneficiary, to the contributor's estate~~ designated beneficiary as provided in this subsection. If the contributor has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the contributor's account balance to the named beneficiary. If the contributor has named more than one primary

beneficiary, the board shall pay the contributor's account balance to the named primary beneficiaries in the percentages designated by the contributor or, if the contributor has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the contributor, 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 contributor's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board shall pay the contributor's account balance to the contributor's estate. If the contributor has not designated an alternate beneficiary under this section or the surviving spouse is the beneficiary, the surviving spouse of the contributor may select one of the following optional forms of payment:

- a. A lump sum payment of the contributor's accumulated deductions as of the date of death.
- b. Payments for sixty months as calculated for the deceased contributor as if the contributor were age fifty-five at the date of death.
- c. Payment of a monthly retirement benefit equal to fifty percent of the deceased contributor's accrued normal retirement benefits until the spouse dies.

SECTION 4. A new subsection to the new section to chapter 39-03.1 of the North Dakota Century Code as created by section 1 of this Act is created and enacted as follows:

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.

SECTION 5. EFFECTIVE DATE. Section 4 of this Act becomes effective on the date the board of trustees of the public employees retirement system receives a letter ruling from the internal revenue service that section 4 of this Act does not jeopardize the qualified status of the highway patrolmen's retirement system. The board shall notify the legislative council of the effective date of section 4 of this Act.

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 331

SENATE BILL NO. 2159

(Transportation Committee)

(At the request of the Department of Transportation)

NUMBER PLATES AND DEALER LICENSING

AN ACT to amend and reenact sections 39-04-08.1, 39-04-19, subsection 2 of section 39-04-36, and section 39-22-12 of the North Dakota Century Code, relating to number plate use and fees and a motor vehicle dealer licensing exemption; to repeal section 39-04-09.1 of the North Dakota Century Code, relating to Lewis and Clark number plates; to provide for a legislative council study; to provide application of points and fees; to provide a temporary allocation; 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 39-04-08.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-04-08.1. Assignment of motor vehicle number plates. Motor vehicle number plates may not be assigned as a reward for any political activity, in recognition of any political affiliation or membership in any political party, or on the basis of political favoritism. However, an elected state office may be assigned a single or double digit number on a number plate as requested by that official. ~~Except as provided in sections 39-04-10 and 39-04-10.3, the department shall charge a nonrefundable fee of ten dollars if an applicant chooses a number plate other than the number plate randomly assigned.~~ The department of transportation may adopt rules governing the assignment of numbers on motor vehicle number plates in accordance with this section.

SECTION 2. 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	\$50.00 <u>\$57.00</u>	\$42.00 <u>\$49.00</u>	\$34.00 <u>\$41.00</u>	\$26.00 <u>\$33.00</u>
3,200 - 4,499	70.00 <u>77.00</u>	58.00 <u>65.00</u>	46.00 <u>53.00</u>	34.00 <u>41.00</u>
4,500 - 4,999	88.00 <u>95.00</u>	74.00 <u>78.00</u>	56.00 <u>63.00</u>	40.00 <u>47.00</u>
5,000 - 5,999	119.00 <u>126.00</u>	97.00 <u>104.00</u>	75.00 <u>82.00</u>	53.00 <u>60.00</u>
6,000 - 6,999	152.00 <u>159.00</u>	123.00 <u>130.00</u>	94.00 <u>101.00</u>	66.00 <u>73.00</u>
7,000 - 7,999	185.00 <u>192.00</u>	149.00 <u>156.00</u>	114.00 <u>121.00</u>	79.00 <u>86.00</u>
8,000 - 8,999	218.00 <u>225.00</u>	176.00 <u>183.00</u>	134.00 <u>141.00</u>	92.00 <u>99.00</u>
9,000 and over	251.00 <u>258.00</u>	202.00 <u>209.00</u>	154.00 <u>161.00</u>	105.00 <u>112.00</u>

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	\$48.00 <u>\$55.00</u>	\$35.00 <u>\$42.00</u>	\$30.00 <u>\$37.00</u>	\$27.00 <u>\$34.00</u>	\$26.00 <u>\$33.00</u>
4,001 - 6,000	53.00 <u>60.00</u>	40.00 <u>47.00</u>	34.00 <u>41.00</u>	28.00 <u>35.00</u>	27.00 <u>34.00</u>
6,001 - 8,000	58.00 <u>65.00</u>	45.00 <u>52.00</u>	38.00 <u>45.00</u>	29.00 <u>36.00</u>	28.00 <u>35.00</u>
8,001 - 10,000	63.00 <u>70.00</u>	50.00 <u>57.00</u>	42.00 <u>49.00</u>	31.00 <u>38.00</u>	30.00 <u>37.00</u>
10,001 - 12,000	68.00 <u>75.00</u>	55.00 <u>62.00</u>	46.00 <u>53.00</u>	33.00 <u>40.00</u>	32.00 <u>39.00</u>
12,001 - 14,000	73.00 <u>80.00</u>	60.00 <u>67.00</u>	50.00 <u>57.00</u>	36.00 <u>43.00</u>	35.00 <u>42.00</u>
14,001 - 16,000	78.00 <u>85.00</u>	65.00 <u>72.00</u>	54.00 <u>61.00</u>	39.00 <u>46.00</u>	38.00 <u>45.00</u>
16,001 - 18,000	83.00 <u>90.00</u>	70.00 <u>77.00</u>	58.00 <u>65.00</u>	41.00 <u>48.00</u>	40.00 <u>47.00</u>
18,001 - 20,000	86.00 <u>93.00</u>	73.00 <u>80.00</u>	60.00 <u>67.00</u>	42.00 <u>49.00</u>	41.00 <u>48.00</u>

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	\$116.00 <u>\$123.00</u>	\$90.00 <u>\$97.00</u>	\$77.00 <u>\$84.00</u>
22,001 - 26,000	168.00 <u>175.00</u>	138.00 <u>145.00</u>	122.00 <u>129.00</u>
26,001 - 30,000	229.00 <u>236.00</u>	187.00 <u>194.00</u>	165.00 <u>172.00</u>
30,001 - 34,000	295.00 <u>302.00</u>	240.00 <u>247.00</u>	212.00 <u>219.00</u>
34,001 - 38,000	356.00 <u>363.00</u>	289.00 <u>296.00</u>	255.00 <u>262.00</u>
38,001 - 42,000	417.00 <u>424.00</u>	338.00 <u>345.00</u>	297.00 <u>304.00</u>
42,001 - 46,000	478.00 <u>485.00</u>	386.00 <u>393.00</u>	340.00 <u>347.00</u>

46,001 - 50,000	539.00 <u>546.00</u>	435.00 <u>442.00</u>	383.00 <u>390.00</u>
50,001 - 54,000	609.00 <u>616.00</u>	493.00 <u>500.00</u>	434.00 <u>441.00</u>
54,001 - 58,000	670.00 <u>677.00</u>	542.00 <u>549.00</u>	477.00 <u>484.00</u>
58,001 - 62,000	731.00 <u>739.00</u>	591.00 <u>598.00</u>	520.00 <u>527.00</u>
62,001 - 66,000	792.00 <u>799.00</u>	639.00 <u>646.00</u>	563.00 <u>570.00</u>
66,001 - 70,000	853.00 <u>860.00</u>	688.00 <u>695.00</u>	605.00 <u>612.00</u>
70,001 - 74,000	914.00 <u>921.00</u>	737.00 <u>744.00</u>	648.00 <u>655.00</u>
74,001 - 78,000	975.00 <u>982.00</u>	786.00 <u>793.00</u>	691.00 <u>698.00</u>
78,001 - 82,000	1,036.00 <u>1,043.00</u>	835.00 <u>842.00</u>	734.00 <u>741.00</u>
82,001 - 86,000	1,159.00 <u>1,166.00</u>	940.00 <u>947.00</u>	821.00 <u>828.00</u>
86,001 - 90,000	1,281.00 <u>1,288.00</u>	1,044.00 <u>1,051.00</u>	908.00 <u>915.00</u>
90,001 - 94,000	1,403.00 <u>1,410.00</u>	1,149.00 <u>1,156.00</u>	995.00 <u>1,002.00</u>
94,001 - 98,000	1,525.00 <u>1,532.00</u>	1,254.00 <u>1,261.00</u>	1,083.00 <u>1,090.00</u>
98,001 - 102,000	1,647.00 <u>1,654.00</u>	1,358.00 <u>1,365.00</u>	1,170.00 <u>1,177.00</u>
102,001 - 105,500	1,769.00 <u>1,776.00</u>	1,463.00 <u>1,470.00</u>	1,257.00 <u>1,264.00</u>

c. Motorcycles, fifteen dollars.

3. 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.
4. Every trailer, semitrailer, and farm trailer required to be registered under this chapter must be furnished registration plates upon the payment of a twenty dollar annual fee. Every trailer, semitrailer, or farm trailer not required to be registered under this chapter must be furnished an identification plate upon the payment of a fee of five dollars. 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	\$88.00 <u>\$95.00</u>	\$74.00 <u>\$81.00</u>	\$60.00 <u>\$67.00</u>	\$42.00 <u>\$49.00</u>
22,001 - 24,000	93.00 <u>100.00</u>	78.00 <u>85.00</u>	63.00 <u>70.00</u>	44.00 <u>51.00</u>
24,001 - 26,000	101.00 <u>108.00</u>	84.00 <u>91.00</u>	67.00 <u>74.00</u>	46.00 <u>53.00</u>
26,001 - 28,000	111.00 <u>119.00</u>	92.00 <u>99.00</u>	73.00 <u>80.00</u>	50.00 <u>57.00</u>
28,001 - 30,000	121.00 <u>128.00</u>	100.00 <u>107.00</u>	79.00 <u>86.00</u>	54.00 <u>61.00</u>
30,001 - 32,000	136.00 <u>143.00</u>	113.00 <u>120.00</u>	90.00 <u>97.00</u>	63.00 <u>70.00</u>
32,001 - 34,000	146.00 <u>153.00</u>	121.00 <u>128.00</u>	96.00 <u>103.00</u>	67.00 <u>74.00</u>
34,001 - 36,000	156.00 <u>163.00</u>	129.00 <u>136.00</u>	102.00 <u>109.00</u>	71.00 <u>78.00</u>
36,001 - 38,000	166.00 <u>173.00</u>	137.00 <u>144.00</u>	108.00 <u>115.00</u>	75.00 <u>82.00</u>
38,001 - 40,000	176.00 <u>183.00</u>	145.00 <u>152.00</u>	114.00 <u>121.00</u>	79.00 <u>86.00</u>
40,001 - 42,000	186.00 <u>193.00</u>	153.00 <u>160.00</u>	120.00 <u>127.00</u>	83.00 <u>90.00</u>
42,001 - 44,000	196.00 <u>203.00</u>	161.00 <u>168.00</u>	126.00 <u>133.00</u>	87.00 <u>94.00</u>
44,001 - 46,000	206.00 <u>213.00</u>	169.00 <u>176.00</u>	132.00 <u>139.00</u>	91.00 <u>98.00</u>
46,001 - 48,000	216.00 <u>223.00</u>	177.00 <u>184.00</u>	138.00 <u>145.00</u>	95.00 <u>102.00</u>
48,001 - 50,000	226.00 <u>233.00</u>	185.00 <u>192.00</u>	144.00 <u>151.00</u>	99.00 <u>106.00</u>
50,001 - 52,000	246.00 <u>253.00</u>	203.00 <u>210.00</u>	160.00 <u>167.00</u>	113.00 <u>120.00</u>
52,001 - 54,000	256.00 <u>263.00</u>	211.00 <u>218.00</u>	166.00 <u>173.00</u>	117.00 <u>124.00</u>
54,001 - 56,000	266.00 <u>273.00</u>	219.00 <u>226.00</u>	172.00 <u>179.00</u>	121.00 <u>128.00</u>
56,001 - 58,000	276.00 <u>283.00</u>	227.00 <u>234.00</u>	178.00 <u>185.00</u>	125.00 <u>132.00</u>
58,001 - 60,000	286.00 <u>293.00</u>	235.00 <u>242.00</u>	184.00 <u>191.00</u>	129.00 <u>136.00</u>
60,001 - 62,000	296.00 <u>303.00</u>	243.00 <u>250.00</u>	190.00 <u>197.00</u>	133.00 <u>140.00</u>
62,001 - 64,000	306.00 <u>313.00</u>	251.00 <u>258.00</u>	196.00 <u>203.00</u>	137.00 <u>144.00</u>
64,001 - 66,000	316.00 <u>323.00</u>	259.00 <u>266.00</u>	202.00 <u>209.00</u>	141.00 <u>148.00</u>
66,001 - 68,000	326.00 <u>333.00</u>	267.00 <u>274.00</u>	208.00 <u>215.00</u>	145.00 <u>152.00</u>
68,001 - 70,000	336.00 <u>343.00</u>	275.00 <u>282.00</u>	214.00 <u>221.00</u>	149.00 <u>156.00</u>
70,001 - 72,000	346.00 <u>353.00</u>	283.00 <u>290.00</u>	220.00 <u>227.00</u>	153.00 <u>160.00</u>
72,001 - 74,000	356.00 <u>363.00</u>	291.00 <u>298.00</u>	226.00 <u>233.00</u>	157.00 <u>164.00</u>
74,001 - 76,000	366.00 <u>373.00</u>	299.00 <u>306.00</u>	232.00 <u>239.00</u>	161.00 <u>168.00</u>
76,001 - 78,000	376.00 <u>383.00</u>	307.00 <u>314.00</u>	238.00 <u>245.00</u>	165.00 <u>172.00</u>
78,001 - 80,000	386.00 <u>393.00</u>	315.00 <u>322.00</u>	244.00 <u>251.00</u>	169.00 <u>176.00</u>
80,001 - 82,000	396.00 <u>403.00</u>	323.00 <u>330.00</u>	250.00 <u>257.00</u>	173.00 <u>180.00</u>
82,001 - 84,000	406.00 <u>413.00</u>	345.00 <u>352.00</u>	293.00 <u>300.00</u>	249.00 <u>256.00</u>
84,001 - 86,000	426.00 <u>433.00</u>	362.00 <u>369.00</u>	307.00 <u>314.00</u>	261.00 <u>268.00</u>
86,001 - 88,000	446.00 <u>453.00</u>	379.00 <u>386.00</u>	321.00 <u>328.00</u>	273.00 <u>280.00</u>
88,001 - 90,000	466.00 <u>473.00</u>	396.00 <u>403.00</u>	335.00 <u>342.00</u>	285.00 <u>292.00</u>
90,001 - 92,000	486.00 <u>493.00</u>	413.00 <u>420.00</u>	349.00 <u>356.00</u>	297.00 <u>304.00</u>
92,001 - 94,000	506.00 <u>513.00</u>	430.00 <u>437.00</u>	363.00 <u>370.00</u>	309.00 <u>316.00</u>
94,001 - 96,000	526.00 <u>533.00</u>	447.00 <u>454.00</u>	377.00 <u>384.00</u>	321.00 <u>328.00</u>
96,001 - 98,000	546.00 <u>553.00</u>	464.00 <u>471.00</u>	391.00 <u>398.00</u>	333.00 <u>340.00</u>
98,001 - 100,000	566.00 <u>573.00</u>	481.00 <u>488.00</u>	405.00 <u>412.00</u>	345.00 <u>352.00</u>
100,001 - 102,000	586.00 <u>593.00</u>	498.00 <u>505.00</u>	419.00 <u>426.00</u>	357.00 <u>364.00</u>
102,001 - 104,000	606.00 <u>613.00</u>	515.00 <u>522.00</u>	433.00 <u>440.00</u>	369.00 <u>376.00</u>
104,001 - 105,500	626.00 <u>633.00</u>	532.00 <u>539.00</u>	447.00 <u>454.00</u>	381.00 <u>388.00</u>

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.

¹⁶² **SECTION 3. AMENDMENT.** Subsection 2 of section 39-04-36 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Upon applying for the transfer of the registration and paying a five dollar fee, a person who transfers or assigns to another person the ownership of a registered vehicle may receive credit for the unused portion of the fees paid for the transferred vehicle. The transferor must use a number plate previously removed pursuant to subsection 1, regardless of whether there is any license fee credit remaining. If the number plate has become lost, stolen, or mutilated, the transferor may apply for duplicate plates. The department may establish procedures that permit the transferor to assign the credit to the transferee if the transferor is the spouse, a sibling, or a lineal ancestor or descendant of the transferee. One-twelfth of the annual fee must be credited for each month of the registration period remaining after the month in which the transfer is made. The credit may not extend beyond the original expiration of the registration. Except as provided in section 39-04-44, the credit must be applied to the registration fees for a replacement vehicle. The transferor shall apply for the transfer of registration within thirty days of the purchase of the replacement vehicle.

SECTION 4. AMENDMENT. Section 39-22-12 of the North Dakota Century Code is amended and reenacted as follows:

39-22-12. Officers to administer chapter - House car dealer, manufacturer, and distributor exemption. The director and any duly authorized representative ~~shall be~~ are responsible for the administration of ~~the provisions of~~ this chapter. This chapter does not apply to house car dealers, manufacturers, and distributors.

SECTION 5. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying during the 2001-02 interim highway construction and maintenance funding, including revenue sources and distribution formulas for the state, cities, and counties. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 6. APPLICATION OF DEMERIT POINTS OR FEES. The operator's license demerit points or fees for driving in violation of section 39-09-02, or equivalent ordinance, as provided by Senate Bill No. 2088, as passed by the fifty-seventh legislative assembly, do not apply to offenses committed before July 1, 2001.

SECTION 7. TEMPORARY ALLOCATION. Two 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 39-04-09.1 of the North Dakota Century Code is repealed.

¹⁶² Section 39-04-36 was also amended by section 1 of House Bill No. 1184, chapter 336.

SECTION 9. EFFECTIVE DATE. Section 2 of this Act is effective for registrations due after June 30, 2001. Section 1 of this Act becomes effective on January 1, 2003. Section 8 of this Act becomes effective on January 1, 2007.

SECTION 10. EXPIRATION DATE. Section 7 of this Act is effective through June 30, 2003, and after that date is ineffective.

Approved May 4, 2001
Filed May 8, 2001

CHAPTER 332

SENATE BILL NO. 2158

(Senator Flakoll)

(At the request of the Adjutant General)

VETERANS' CEMETERY LICENSE PLATES

AN ACT to amend and reenact section 39-04-10.10 of the North Dakota Century Code, relating to interest earned from the sale of veterans' cemetery license plates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-10.10 of the North Dakota Century Code is amended and reenacted as follows:

39-04-10.10. North Dakota veterans' cemetery number plates.

1. The director may issue distinctive number plates to individuals eligible for interment in the North Dakota veterans' cemetery. The director shall issue a number plate under this section upon receiving:
 - a. Payment of all other fees required under this chapter for registration of a motor vehicle;
 - b. Payment of an annual fee of five dollars for deposit in the highway tax distribution fund; and
 - c. Verification of payment of an annual surcharge of ten dollars paid to the adjutant general.
2. The department shall collect the fees and surcharge under this section. The department shall report to the legislative assembly on the funds collected under this section during each legislative session. The department shall pay the funds collected under subdivision c of subsection 1 to the adjutant general monthly, who then, within ten days of receipt of the funds, shall deposit five dollars of each surcharge in the veterans' cemetery trust fund and the remaining five dollars of each surcharge in the veterans' cemetery maintenance fund in the state treasury. The state investment board shall manage the veterans' cemetery trust fund. ~~The~~ At the request of the adjutant general, the interest in the veterans' cemetery trust fund, subject to legislative appropriation, may be expended must be deposited in the veterans' cemetery maintenance fund for the purpose of funding salaries and maintenance of the veterans' cemetery.
3. The veterans' cemetery trust fund may accept funds from private and federal sources.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 333

HOUSE BILL NO. 1289

(Representatives Mueller, Disrud, Drovdal)
(Senators Krauter, Lyson)

FIREMEN'S ASSOCIATION VEHICLE PLATES

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to motor vehicle number plates bearing a logo identifying members of the North Dakota firemen's association.

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:

Firemen's association plates. The director, in cooperation with the North Dakota firemen's association, shall design a decorative decal that contains an insignia representing service in the pursuit of firefighting and which is 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 annual fee of fifteen dollars for deposit in the highway fund, the applicant is entitled to issuance of the decals and plates. However, the director may not issue the decal 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]. A registrant is eligible for distinctive number plates under this section if the registrant is a member of the North Dakota firemen's association. On request of the director, the North Dakota firemen's association shall certify those members of the North Dakota firemen's association eligible to receive the decals and plates. On termination of the registrant's eligibility, the registrant shall return the decals and plates to the director, who shall reissue for a fee of not more than five dollars another number plate to which that registrant is entitled under this chapter. The director and North Dakota firemen's association shall cooperate in establishing procedures to implement this section.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 334

HOUSE BILL NO. 1325

(Representatives Pietsch, Aarsvold, Byerly)
(Senator Lyson)

DISABLED VETERAN EXCISE TAX EXEMPTION

AN ACT to amend and reenact subdivision j of subsection 2 of section 39-04-18 and subsection 1 of section 57-40.3-04 of the North Dakota Century Code, relating to motor vehicle excise tax exemptions for motor vehicles acquired or leased by disabled veterans; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶³ **SECTION 1. AMENDMENT.** Subdivision j of subsection 2 of section 39-04-18 of the North Dakota Century Code is amended and reenacted as follows:

- j. Passenger motor vehicles, house cars, or pickup trucks not exceeding ten thousand pounds [4535.92 kilograms] gross weight owned and operated by a disabled veteran under the provisions of Public Law 79-663 [38 U.S.C. 4904 3901]; ~~provided, however, that such vehicles or who has a one hundred percent service-connected disability as determined by the department of veterans affairs who is entitled to display a distinctive license plate issued by the department upon the payment of a fee of five dollars.~~ This exemption applies to no more than two such motor vehicles owned by a disabled veteran at any one time.

¹⁶⁴ **SECTION 2. AMENDMENT.** Subsection 1 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Motor vehicles~~ Any motor vehicle acquired by, or leased and in the possession of, a resident disabled veterans veteran under the provisions of Pub. L. 79-663 [38 U.S.C. 4904 3901] ~~and any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight subsequently purchased or acquired by a disabled veteran; provided, that this exemption is allowed only with respect to one motor vehicle owned or leased by a disabled veteran at any one time or who has a one hundred percent service-connected disability as determined by the department of veterans affairs who registers the vehicle with a distinctive license plate issued by the department of transportation under subdivision j of subsection 2 of section 39-04-18. The owner or lessor of the motor vehicle who qualifies for the exemption under this subsection is entitled to a refund of taxes paid under this chapter on acquisition or leasing of the vehicle if~~

¹⁶³ Section 39-04-18 was also amended by section 2 of House Bill No. 1185, chapter 329.

¹⁶⁴ Section 57-40.3-04 was amended by section 3 of House Bill No. 1201, chapter 543, and section 1 of Senate Bill No. 2209, chapter 544.

the distinctive license plate was acquired not more than sixty days after acquisition or leasing of the vehicle.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2001.

Approved March 16, 2001

Filed March 16, 2001

CHAPTER 335

HOUSE BILL NO. 1261

(Representatives Drovdal, Jensen, Kempenich)
(Senator Lyson)

MOTOR VEHICLE REGISTRATION

AN ACT to create and enact a new section to chapter 39-04 and a new subsection to section 57-40.3-07 of the North Dakota Century Code, relating to registration of a motor vehicle; and to declare an emergency.

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:

Failure to register upon gainful employment. A person operating a motor vehicle in violation of subdivision c or e of subsection 2 of section 39-04-18 shall purchase an annual registration for that motor vehicle for a fee that is not discounted from the appropriate amount listed in a table in section 39-04-19. A law enforcement officer may issue a registration for that vehicle and shall remit the registration fee to the department of transportation. The department shall provide for evidence of registration to be issued by a law enforcement officer enforcing subdivision c or e of subsection 2 of section 39-04-18.

SECTION 2. A new subsection to section 57-40.3-07 of the North Dakota Century Code is created and enacted as follows:

For a vehicle leased and registered or licensed in another state by a nonresident individual who is stationed as a member of the armed services of the United States in this state, the vehicle is exempt from tax imposed under this chapter and registration in this state must be issued upon application and payment of appropriate registration fees.

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

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 336

HOUSE BILL NO. 1184

(Transportation Committee)

(At the request of the Department of Transportation)

LICENSE FEE CREDITS

AN ACT to amend and reenact subsections 2 and 3 of section 39-04-36 of the North Dakota Century Code, relating to license fee credits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁵ **SECTION 1. AMENDMENT.** Subsections 2 and 3 of section 39-04-36 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. Upon applying for the transfer of the registration and paying a five dollar fee, a person who transfers or assigns to another person the ownership of a registered vehicle may receive credit for the unused portion of the fees paid for the transferred vehicle. The department may establish procedures that permit the transferor to assign the credit to the transferee if the transferor is the spouse, a sibling, or a lineal ancestor or descendant of the transferee. Any remaining credit on a vehicle owned by a leasing company must be credited to the lessee. One-twelfth of the annual fee must be credited for each month of the registration period remaining after the month in which the transfer is made. The credit may not extend beyond the original expiration of the registration. Except as provided in section 39-04-44, the credit must be applied to the registration fees for a replacement vehicle. The transferor shall apply for the transfer of registration within thirty days of the purchase of the replacement vehicle.
3. Except as otherwise permitted in this chapter, before the transferee of a registered vehicle may operate the vehicle on a highway, the transferee must apply for and obtain a new registration of the vehicle, as on an original registration. To provide the transferee adequate time to obtain a new registration, the director may provide for the issuance of a temporary registration certificate to permit the transferee to operate the vehicle for thirty days after the date of acquisition. The certificate must be printed on the reverse side of each vehicle registration card and must be available to the transferee from licensed vehicle dealers, law enforcement agencies, and motor vehicle branch offices. The vehicle may be operated for five days from date of purchase without a plate or certificate of ownership if dated evidence of ownership is carried in the vehicle. The evidence of ownership must be in a form as prescribed by the department.

¹⁶⁵ Section 39-04-36 was also amended by section 3 of Senate Bill No. 2159, chapter 331.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on April 1, 2002.

Approved April 18, 2001

Filed April 18, 2001

CHAPTER 337

SENATE BILL NO. 2273

(Senators Stenehjem, O'Connell, Schobinger)
(Representatives Keiser, Mahoney, Weisz)

MOTOR VEHICLE DEALER LICENSING AND TITLE TRANSFERS

AN ACT to create and enact thirteen new sections to chapter 39-22 of the North Dakota Century Code, relating to the licensing of motor vehicle dealers; to amend and reenact sections 39-05-17, 39-22-04, 39-22-05.1, 39-22-06, and 39-22-11 of the North Dakota Century Code, relating to vehicle title transfer requirements and motor vehicle dealer licensing; to repeal sections 39-22-02, 39-22-07, and 39-22-08 of the North Dakota Century Code, relating to motor vehicle dealer licensing; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-05-17 of the North Dakota Century Code is amended and reenacted as follows:

39-05-17. Transfer of title of vehicle - Endorsement required - Certificate of title delivered - New certificate obtained - Penalty. The owner of a motor vehicle who sells or transfers title to a vehicle shall endorse an assignment and warranty of title upon the certificate of title for the vehicle, with a statement whether there are liens or encumbrances thereon, which statement must be verified by the owner. The owner shall include on the assignment and warranty of title the name of the purchaser and the selling price of the vehicle. The owner shall deliver the certificate of title to the purchaser if title passes to the purchaser. If the title does not pass to the purchaser under the terms of the contract for sale of the vehicle, the lienholder shall endorse thereon a statement that the lienholder holds the lien, the date thereof, and the name of the purchaser, and shall send the certificate of title to the department with an application of the purchaser for a new certificate of title showing the name of the owner, lienholder, and the date of the lien of the lienholder, which certificate of title when issued must be returned by the department to the lienholder, who shall retain the same in the lienholder's possession until the terms of the contract are complied with by the purchaser, and thereupon, after showing the lien has been paid and satisfied the lienholder shall deliver the certificate of title properly assigned to the purchaser. The purchaser or transferee shall present the endorsed and assigned certificate to the department, within thirty days after the receipt thereof, accompanied by a transfer fee of five dollars, and shall make an application for and obtain a new certificate of title for the vehicle. In addition to any other penalty, the registration to a motor vehicle may be suspended or revoked whenever the purchaser or transferee fails to present the endorsed and assigned certificate of title to the department for transfer and make application for a new certificate of title within the prescribed thirty days. The department shall deliver the new certificate of title to the lienholder with priority. If there is no lienholder, delivery is made to the purchaser. A violation of the provisions of this section ~~constitutes an infraction~~ is a class B misdemeanor.

SECTION 2. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Motor vehicle dealer license - Fees - Penalty. It is unlawful for any person to engage in the business of buying, selling, or exchanging of motor vehicles without possessing a current motor vehicle dealer license. A person may not advertise or otherwise hold out to the public as engaging in the buying, selling, or exchanging of motor vehicles for resale without possession of a current new motor vehicle dealer license or used motor vehicle dealer license. The motor vehicle dealer license fee is one hundred dollars per year and with which must be issued one dealer plate. A nonrefundable fee of one hundred dollars must be charged for the initial inspection of an application for a dealer license and must accompany the initial application for a new or used motor vehicle dealer license. The applicant shall provide the business's federal employer identification number or, in the case of an application from an individual, social security number. Any person violating a provision of this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department must suspend the license of a motor vehicle dealer licensed under to this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 3. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Established place of business - Penalty. A dealer license may not be issued until the applicant furnishes proof satisfactory to the director that the applicant has, does, and will continue to maintain in North Dakota an established place of business adjacent to the primary motor vehicle display lot maintained by the dealer. An established place of business means a permanent enclosed building of at least two hundred fifty square feet [23.22 square meters] either owned, rented, or leased at which a permanent business of bartering, trading, and selling of motor vehicles will be conducted and does not mean a residence, tents, temporary stands, or other temporary quarters. The established place of business and primary motor vehicle display lot must cover at least two thousand five hundred square feet [232.26 square meters] and be located on property zoned or otherwise approved for this purpose by the appropriate zoning authority. The established place of business must be adequately heated and lighted so as to be comfortable for customers and employees and be equipped with standard office equipment necessary for the conduct of the business. All records related to the business, including titles or other documents showing ownership of the vehicles, must be kept and maintained at the established place of business. An established place of business must have a telephone publicly listed in the name of the dealership, be open to the public during normal business hours, and have a sign identifying the business to the public as a motor vehicle dealership. The sign must be at least thirty-two square feet [2.97 square meters] in size, contain the name of the dealership in letters at least ten inches [25.4 centimeters] high, and be clearly visible from the street. A business sign approved by a motor vehicle manufacturer may be used in lieu of the sign requirements of this section. If the licensee desires to move from the established place of business occupied when the license was granted to a new location, the licensee shall first secure from the director permission to do so. The licensee must furnish proof satisfactory to the director that the premises to which the licensee proposes to move conform with the requirements of this section. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor vehicle

dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 4. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Application for new motor vehicle dealer license - Franchise required - Selling vehicles without a franchise - Penalty. In the case of an application for a new motor vehicle dealer license, the applicant shall furnish proof satisfactory to the director that the applicant has a bona fide contract or franchise in effect with a manufacturer or distributor of the new motor vehicle or motor vehicles in which the dealer proposes to deal. A new motor vehicle dealer license entitles the holder to deal in both used motor vehicles and in those new motor vehicles only for which the dealer has a bona fide contract or franchise in effect with a manufacturer or distributor. A used motor vehicle dealer license entitles the holder to deal in used motor vehicles only.

New motor vehicle dealers who have been issued surrounding communities as a part of their dealer area of responsibility may be issued additional new motor vehicle dealer licenses if the manufacturer provides the department written approval of additional sites for display and sale of motor vehicles. Applicants for additional new car dealer licenses must meet all of the requirements of this chapter.

Whenever a motor vehicle dealer purchases or holds for sale a new motor vehicle for which the dealer does not have a bona fide contract or franchise in effect with a manufacturer or distributor, the new motor vehicle becomes, at the time of purchase or possession, subject to the registration provisions of chapter 39-04, the title registration provisions of chapter 39-05, and the motor vehicle excise tax provisions of chapter 57-40.3. Any person violating this section must be assessed a two hundred fifty dollar fee by the department for a first violation and a five hundred dollar fee by the department for a second violation within two years of the first violation. The department must suspend the license of a motor vehicle dealer licensed under to this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 5. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Additional dealer plates - In-transit plates - Demonstration plates - Fees - Use of dealer plates - Penalty. Additional dealer number plates must be issued to the dealer upon payment of a fee of twenty-five dollars each. These number plates may be used on any vehicle owned by the dealership and used in the direct functions of demonstrating, buying, or selling vehicles. Dealer plates may not be used on service vehicles or vehicles used in other functions of the business, sold units in the possession of the purchaser, by family members not residing at the dealer's residence, or by other persons not directly involved in the operation of the dealership. The director may issue to any dealer an in-transit license plate for a fee of five dollars per plate and a demonstration plate for a fee of five dollars per plate. A dealer in-transit plate may be used on vehicles in lieu of dealer's plates while a motor vehicle is in transit from its place of manufacture, or any other place, to the dealer or in transit from the dealer, by a direct route, to another destination. A dealer demonstration plate may be used only on a vehicle which is owned by the dealership and being demonstrated to a customer. A dealer demonstration plate is valid for use only within a radius of one hundred miles [160.93 kilometers] of the dealer's established place of business. Any dealer plate, in-transit plate, or demonstration plate displayed on a vehicle must be displayed on the rear of the vehicle. Any

person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor vehicle dealer licensed under to this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 6. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Renewal of dealer license - Fees - Minimum sales requirement. A dealer license issued under this chapter expires on December thirty-first of each year. A licensed dealer may apply for renewal of the dealer's license on forms prescribed by the department and payment of the dealer license and dealer plate fees required by this chapter. The department shall not renew the dealer license of any applicant who has made less than four retail motor vehicle sales during the previous year. The department may adopt administrative rules to limit the number of dealer plates available to an applicant based on the applicant's motor vehicle sales history.

SECTION 7. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Garage liability insurance requirement. Before the issuance of a motor vehicle dealer license, the applicant must provide proof to the department of a continuous policy of garage liability insurance. The insurance company that issued the policy must notify the department of any cancellation, suspension, or revocation of the coverage. Any motor vehicle dealer who fails to maintain the insurance coverage required by this section shall return the dealer license and dealer number plates to the department on or before the effective date of the cancellation, suspension, or revocation. Failure to return the dealer license or dealer number plates results in automatic revocation by operation of law. The department may order the superintendent to take possession of any dealer license or dealer number plates not returned to the department as required in this section. The department shall reinstate the dealer license and dealer number plates only when proof of insurance coverage is received.

SECTION 8. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Display and sale of vehicles by out-of-state dealers - Offsite display and sale by in-state dealers - Penalty. An out-of-state motor vehicle dealer who possesses a current motor vehicle dealer license from the dealer's home jurisdiction may participate in bona fide North Dakota automobile shows and sales promotions after obtaining a permit from the department. The permit must be issued upon the payment of a fee of one hundred dollars and is valid for a period of time, not to exceed seven days, to be determined by the department. A motor vehicle dealer licensed under this chapter may participate in bona fide automobile shows and sales promotions in this state after obtaining a permit from the department. The permit must be issued upon the payment of a fee of twenty-five dollars and is valid for a period of time, not to exceed seven days, to be determined by the department. The department shall deny an application for a permit if it determines the applicant does not intend to participate in a bona fide show or promotion. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 9. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

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. 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 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.

SECTION 10. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Operators of motor vehicle display lots - Permit required - Fee - Records required - Penalty. A person not licensed as a motor vehicle dealer may operate display lots on which the owner of a vehicle may display the vehicle for sale. The display lot must be located on property zoned or otherwise approved for this purpose by the appropriate zoning authority. The display lot operator must obtain an annual permit from the department to operate such a lot. The annual fee for the permit is fifty dollars. The display lot operator must provide the department with proof of a liability insurance policy with a minimum coverage of three hundred thousand dollars. The display lot must have a prominent sign identifying the business and the telephone number of the business owner. The sign must be at least thirty-two square feet [2.97 square meters] in size, contain the name of the display lot operator in letters at least ten inches [25.4 centimeters] high, and be clearly visible from the street. The display lot operator, before providing space to a vehicle owner, must verify that the person renting the space is the owner of the vehicle that will be displayed and keep records for at least one year thereafter verifying compliance with this requirement. A licensed motor vehicle dealer shall not be permitted to operate display lots except on property that is not otherwise a part of the licensed dealership. The department may inspect the records of the display lot operator related to any complaint made against the operator. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the permit if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 11. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Auto auction operators - License required - Records required - Penalty. A person may not operate a wholesale or retail auto auction business without being licensed as a motor vehicle dealer. An auto auction operator must keep records related to the seller and purchaser of all vehicles sold through the operator's business for at least two years and make those records available to the director or an authorized representative of the director upon reasonable request. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 12. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Factory store prohibited - Penalty. A manufacturer, importer, or distributor of new motor vehicles, or a subsidiary thereof, may not own, operate, or control a motor vehicle dealership in this state. This section does not apply if:

1. The ownership and operation is for a temporary period not to exceed one year during the transition from one owner or operator to another; or
2. The dealership is being sold under a bona fide contract or purchase option to the operator of the dealership, or a contract exists under which the operator of the dealership can expect to acquire full ownership of or a controlling interest in the dealership, and after the transfer of ownership is completed the dealership will not be owned, operated, or controlled by the manufacturer, importer, or distributor, or a subsidiary thereof; or
3. If the department determines there is no prospective independent dealer available to own or operate the dealership in a manner consistent with the public interest and meeting the requirements of this chapter.

Any person violating this section is guilty of a class A misdemeanor.

SECTION 13. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Direct manufacturer sales prohibited - Penalty. A manufacturer or franchiser may not offer to sell directly or sell indirectly, any new motor vehicle to a consumer in this state, except through a new motor vehicle dealer holding a franchise for the line make covering the new motor vehicle. This section does not apply to manufacturer or franchiser sales of new motor vehicles to the federal government, charitable organizations, or employees of the manufacturer or franchiser. Any person violating this section is guilty of a class A misdemeanor.

SECTION 14. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Brokering of motor vehicles prohibited - Penalty. A person may not act as, offer to act as, or hold out to be a motor vehicle broker. As used in this section, a broker is a person who, for a fee, commission, or other valuable consideration, arranges or offers to arrange a transaction involving the sale or exchange of a motor vehicle, and who is not:

1. A dealer or a bona fide agent or employee of a dealer;
2. A representative or a bona fide agent or employee of a manufacturer;
3. The bona fide owner of the motor vehicle involved in the transaction; or
4. A bona fide auctioneer conducting an auction involving motor vehicles not owned by the auctioneer.

Any person violating this section is guilty of a class A misdemeanor.

SECTION 15. AMENDMENT. Section 39-22-04 of the North Dakota Century Code is amended and reenacted as follows:

39-22-04. Grounds for denial, suspension, cancellation, or revocation of dealer's license. The director may deny an application for a dealer's license or suspend, revoke, or cancel such a license after it has been granted for the following reasons:

1. For any material misstatement by an applicant in the application for the license.
2. For any willful failure to comply with the provisions of this chapter or with any rule or regulation promulgated by the director.
3. For knowingly permitting any ~~sales~~ person to sell or exchange, or offer or attempt to sell or exchange any motor vehicle except for the licensed motor vehicle dealer by whom the ~~sales~~ person is employed, ~~or to offer, transfer, or assign any sale or exchange that the sales person may have negotiated to any other dealer.~~
4. For having violated any law relating to the sale, distribution, or financing of motor vehicles.
5. For having ceased to have an established place of business as herein defined.
6. For having violated any state or federal law relating to alteration of odometers or vehicle identification number.

SECTION 16. AMENDMENT. Section 39-22-05.1 of the North Dakota Century Code is amended and reenacted as follows:

39-22-05.1. Disposition of fees. Fees from registration of dealers and fees collected from dealers found in violation of this chapter must be deposited with the state treasurer ~~and~~, credited to the motor vehicle registration fund, and used exclusively for enforcement of this chapter.

SECTION 17. AMENDMENT. Section 39-22-06 of the North Dakota Century Code is amended and reenacted as follows:

39-22-06. Motor vehicle lots - Location. A licensed dealer as described in this chapter may establish ~~open~~ secondary motor vehicle lots as may be necessary in the conduct of the dealer's business in an area not further removed than ~~three~~ five miles [~~4.83~~ 8.05 kilometers] from the ~~city limits of the city in which the dealer operates a licensed place of business.~~ Such open dealer's established place of business. Secondary lots must be identified as a part of the licensed dealer's operation with a sign displaying the name and telephone number of the licensed dealer. The sign must be at least thirty-two square feet [2.97 square meters] in size, contain the name of the dealership in letters at least ten inches [25.4 centimeters] high, and be clearly visible from the street. Motor vehicle dealers may not display vehicles except on their primary and secondary lots or as otherwise permitted in this chapter. Any person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall suspend the license of a motor vehicle dealer licensed under this

chapter if a third or subsequent violation of this section occurs within five years of the first violation.

SECTION 18. AMENDMENT. Section 39-22-11 of the North Dakota Century Code is amended and reenacted as follows:

39-22-11. Examination of books and records. The director or any duly authorized representative may inspect the pertinent books, letters, records, and contracts of any licensed motor vehicle dealer or any other person relating to any ~~specific~~ complaint made against such dealer or person and held to be in violation of any of the provisions of this title. In addition, any duly authorized representative of the department may inspect the records of any licensed dealer to verify that fees collected for the department have been properly remitted.

SECTION 19. REPEAL. Sections 39-22-02, 39-22-07, and 39-22-08 of the North Dakota Century Code are repealed.

SECTION 20. EFFECTIVE DATE. This Act is effective for motor vehicle dealer licensing years beginning after December 31, 2001.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 338

HOUSE BILL NO. 1220

(Representatives Delmore, Hawken, Jensen, Mahoney, Pollert)
(Senator Stenehjem)

MINORS' RESTRICTED OPERATORS' LICENSES

AN ACT to amend and reenact subsection 2 of section 39-06-01.1 of the North Dakota Century Code, relating to restricted operators' licenses for minors; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-06-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If an individual has had that individual's license or permit canceled under subsection 1, the director shall deem that individual to have never have had any license or permit to operate a motor vehicle and may not issue any license or permit to drive other than an instruction permit or a restricted instruction permit after the completion of any period of suspension or revocation. After the issuance of an instruction permit or restricted instruction permit, the director may not issue any other license or permit to that individual until, while using the permit issued under this section, that individual:
 - a.
 - (1) Completes a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the director; ~~or~~
 - (2) Completes an internet course through a licensee under chapter 39-25 and completes thirty hours of driving with that individual's parent or guardian in compliance with department rules designed for experience in various driving conditions; or
 - (3) Successfully completes a course at an approved commercial driver training school; and
 - b. Satisfies all other requirements that apply to that individual for that license or permit.

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

Approved April 24, 2001
Filed April 24, 2001

CHAPTER 339

HOUSE BILL NO. 1245

(Representatives Eckre, Hawken, Pollert, Schmidt)
(Senators Mutch, O'Connell)

OPERATOR LICENSE NUMBERS

AN ACT to amend and reenact subsection 1 of section 39-06-14 of the North Dakota Century Code, relating to an operator's license number; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-06-14 of the 1999 Supplement to 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.

SECTION 2. EFFECTIVE DATE - IMPLEMENTATION. This Act becomes effective on January 1, 2002, and the director of the department of transportation shall implement this Act through regular license issuance, renewal, and replacement procedures.

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 340

HOUSE BILL NO. 1189

(Transportation Committee)

(At the request of the Department of Transportation)

DRIVING PRIVILEGE CANCELLATION AND LICENSES

AN ACT to create and enact a new section to chapter 26.1-40 of the North Dakota Century Code, relating to cancellation of a minor's driving privileges; to amend and reenact section 39-06-20, subsection 6 of section 39-06-32, subsection 1 of section 39-06-33, sections 39-06-35, 39-06.1-04, subsection 2 of section 39-06.1-13, section 39-16.1-01, subsection 2 of section 39-20-03.2, and subsection 1 of section 39-20-05 of the North Dakota Century Code, relating to notice of change of address for an operator's license or permit, suspension for failure to appear in court or post and forfeit bond, means to request a hearing, suspended licenses, reduction of point total, proof of financial responsibility, serving results of a blood test on a nonresident operator, and extension of a temporary operator's permit; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-40 of the North Dakota Century Code is created and enacted as follows:

Cancellation of minor's driving privileges - Effect. An insurer may not use or rely on the cancellation of a minor's driving privileges under section 39-06-01.1 as the sole reason to cancel, deny, or not renew the automobile insurance policy of the minor or a parent of the minor unless the points or offenses on the minor's public driving record, separate from a cancellation under section 39-06-01.1, would be a reason to cancel, deny, or not renew the policy.

SECTION 2. AMENDMENT. Section 39-06-20 of the North Dakota Century Code is amended and reenacted as follows:

39-06-20. Notice of change of address or name. Whenever a person after applying for or receiving an operator's license or permit moves from the address named in the application or in the license or permit issued to that person or when the name of a licensee is changed by marriage or otherwise, that person shall within ten days thereafter notify the director in writing or in person of that person's old and new addresses or of such former and new names and of the number of any license or permit then held by that person. A person may obtain a corrected license or permit by making application as provided for in section 39-06-18. In the event of a name change, a corrected license must be obtained. The department may change the address based on information received from any authorized address correction service of the United States postal service. The department may also develop procedures for receiving notification of address changes by telephone or electronic means.

SECTION 3. AMENDMENT. Subsection 6 of section 39-06-32 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 4. AMENDMENT. Subsection 1 of section 39-06-33 of the North Dakota Century Code is amended and reenacted as follows:

1. In matters of driver's license suspension or revocation arising under sections 39-06-32 and 39-06.1-10, and chapters 39-16 and 39-16.1, the director shall give notice of intention to suspend to the licensee by mailing the notice to the licensee at the address of record in the department under section 39-06-20. Actual notice of the opportunity for a hearing under this section must be deemed to have occurred seventy-two hours after the notice is mailed by regular mail. The licensee has ten days after the date of mailing of the notice to request, in writing or by other means authorized by the director, a hearing on the intended suspension or revocation.

SECTION 5. AMENDMENT. Section 39-06-35 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-06-35. Period of suspension. When the period of suspension imposed under this title ceases, the operator's license or driving privilege that has been suspended may not be returned or reinstated, and remains under suspension, until the operator pays to the director a reinstatement fee of fifty dollars, or twenty-five dollars if the suspension was the result of a suspension under subsection 4, 5, or 7 of section 39-06-03 or subsection 2 of section 39-06-32, or one hundred dollars if the suspension was the result of a violation under section 39-08-01 or chapter 39-20, and, if applicable, until compliance with subsection 3.1 of section 39-06.1-10. Upon payment of the reinstatement fee the license must be returned to the operator. A reinstatement fee is not required for a license to be returned to the operator if the return of the license is due to the findings of a hearing, reexamination of hearing, or court or judicial review under chapter 39-06, 39-06.1, or 39-20.

SECTION 6. AMENDMENT. Section 39-06.1-04 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-04. Failure to appear, pay statutory fee, post bond - Procedure - Penalty. If a person fails to choose one of the methods of proceeding set forth in section 39-06.1-02 or 39-06.1-03, the person must be deemed to have admitted to commission of the violation charged, and the official having jurisdiction shall report such fact to the licensing authority within ten days after the date set for the hearing. Failure to appear at the time designated, after signing a promise to appear, if signing is required by law, or failure to appear without paying the statutory fee or posting and forfeiting bond is a class B misdemeanor. Failure to appear without just cause at the hearing must also be deemed an admission of commission of the violation charged.

SECTION 7. AMENDMENT. Subsection 2 of section 39-06.1-13 of the North Dakota Century Code is amended and reenacted as follows:

2. The point total shown on a licensee's driving record must, during any twelve-month period, be reduced by three points when the licensee mails or delivers a certificate to the licensing authority indicating successful completion of instruction in a driver training course approved by the licensing authority. Successful completion of instruction must be certified to by the sponsoring agency or organization of the driver training course. The reduction in points authorized by this subsection must only be from a point total accumulated prior to completion of the necessary hours of driver training instruction, and may not exceed nine points during any three-year period commencing on the date of entry of the last points against the person's driving record. If on the date the licensing authority receives the certificate of completion of the driver training course from the licensee, that licensee's driving record contains twelve or more points or, as a minor, the licensee's driving record contains six points or more, the point reduction authorized by this subsection must be applied only after the period of suspension or cancellation required by the number of points then on the driver's record has been served.

SECTION 8. AMENDMENT. Section 39-16.1-01 of the North Dakota Century Code is amended and reenacted as follows:

39-16.1-01. Application. The provisions of this chapter requiring the deposit of proof of financial responsibility for the future, subject to certain exemptions, apply with respect to any person who has been convicted of or forfeited bail for certain offenses under motor vehicle laws, ~~whose operator's license has been revoked or suspended or issuance has been denied as an administrative sanction under chapter 39-20,~~ or who has failed to pay judgments upon claims for relief arising out of ownership, maintenance, or use of vehicles of a type subject to registration under the laws of this state.

SECTION 9. AMENDMENT. Subsection 2 of section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

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 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.

SECTION 10. AMENDMENT. Subsection 1 of section 39-20-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a hearing if the person mails or communicates by other

means authorized by the director a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. The hearing must be held within thirty days after the date of issuance of the temporary operator's permit. ~~If the hearing date is extended beyond thirty days from the issuance of the temporary operator's permit, the director shall provide extended temporary operator's privileges to the date of the hearing.~~ If no hearing is requested within the time limits in this section, and no affidavit is submitted within the time limits under subsection 2 of section 39-20-04, the expiration of the temporary operator's permit serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.

SECTION 11. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 341

SENATE BILL NO. 2088

(Transportation Committee)

(At the request of the Highway Patrol)

TRAFFIC OFFENSES AND WEIGHT LIMITATIONS

AN ACT to amend and reenact sections 39-06.1-05, 39-06.1-06, 39-06.1-07, 39-06.1-09, and 39-06.1-10, subdivision g of subsection 2 of section 39-07-09, and subsections 1 and 2 of section 39-21-46 of the North Dakota Century Code and subsection 6 of section 39-12-05.3 of the North Dakota Century Code as amended by Senate Bill No. 2054, as approved by the fifty-seventh legislative assembly, relating to traffic offenses and weight limitations; to provide penalties; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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. ~~Failing to display a placard or flag, in violation of any rule implementing section 39-21-44, while transporting explosive or hazardous materials.~~
10. Operating an unsafe vehicle in violation of subdivision b of subsection 1 of section 39-21-46.

¹⁶⁶ **SECTION 2. AMENDMENT.** Section 39-06.1-06 of the 1999 Supplement to 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 ~~subsection 8~~ subsections 7 and 11 of this section 39-06.1-06, 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. ~~Repealed by S.L. 1985, ch. 430, § 4.~~
- ~~7.~~ 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

¹⁶⁶ Section 39-06.1-06 was also amended by section 1 of House Bill No. 1239, chapter 342.

institution property or on the state capitol grounds, a fee in the amount of five dollars.

- ~~8.~~ 7. ~~On~~ Except as provided in subsection 11, 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	\$ 10 plus \$1/each mph over limit
6 - 10	\$ 15 plus \$2/each mph over 5 mph over limit
11 - 15	\$ 25 plus \$3/each mph over 10 mph over limit
<u>16 - 20</u>	<u>\$ 40 plus \$3/each mph over 15 mph over limit</u>
16 <u>21 - 25</u>	\$ 40 <u>55</u> plus \$3/each mph over 15 <u>20</u> mph over limit
26 - 35	\$ 70 plus \$3/each mph over 25 mph over limit
36 + <u>- 45</u>	\$100 <u>120</u> plus \$5/each mph over 35 mph over limit
<u>46 +</u>	<u>\$170 plus \$5/each mph over 45 mph over limit</u>

- ~~9.~~ 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 of section 39-21-46, a fee established as follows:
- 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;
 - False record of duty status or log book or operating a vehicle with seven to nine out-of-service defects, two hundred fifty dollars;
 - 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
 - All other violations of motor carrier safety rules adopted under subsection 2 of section 39-21-46, fifty dollars.
11. On a highway on which the speed limit is posted in excess of seventy miles [112.65 kilometers] an hour, for a violation of section 39-09-02, or equivalent ordinance, a fee established as follows:

<u>Miles per hour over lawful speed limit</u>	<u>Fee</u>
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<u>1 - 5</u>	<u>\$ 20</u>
<u>6 - 10</u>	<u>\$ 40</u>
<u>11 - 15</u>	<u>\$ 60</u>
<u>16 - 20</u>	<u>\$ 80</u>
<u>21 - 25</u>	<u>\$100</u>
<u>26 - 30</u>	<u>\$125</u>
<u>31 - 35</u>	<u>\$150</u>
<u>36 +</u>	<u>\$150 plus \$5/each mph over 35 mph over limit</u>

SECTION 3. AMENDMENT. Section 39-06.1-07 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-07. Notification to offenders - Duties of licensing authority. The licensing authority shall prepare notification forms and a temporary operator's permit as provided in section 39-20-03.1 or 39-20-03.2 to be delivered to persons charged along with the uniform traffic summons and complaint as provided in section 29-05-31. The notification forms must contain language, approved by the attorney general, informing persons charged with traffic violations, other than offenses listed in section 39-06.1-05, of the procedures available to them under sections 39-06.1-02 and 39-06.1-03 and informing persons who refuse a chemical test or onsite screening test under chapter 39-20 or who, on taking a chemical test, are found to be in violation of subdivision a of subsection 1 of section 39-08-01, of the procedures available under chapter 39-20. The notification must also contain a schedule of points to be charged against a person's driving record or other operator's license penalties as provided by law and a schedule of statutory fees and bond amounts as determined in accordance with sections 39-06.1-06 and 39-06.1-02. A notification form separate from the uniform traffic summons and complaint may be delivered to a person charged with a violation of subsection 2 of section 39-21-46.

SECTION 4. 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 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 5. AMENDMENT. Section 39-06.1-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-06.1-10. Entries against driving record - Licensing authority duties - Hearings - Demerit schedule - Suspension.

1. When a report of a conviction of a traffic offense, or admission or adjudication of a traffic violation is received by the licensing authority, the licensing authority shall proceed to enter the proper number of points on the licensee's driving record, unless the number points assigned to the violation are two or less. If the number points assigned to the violation are two or less, the violation and points may not be entered on the driving record but must be recorded separately, and the separate record shall not be available to the public. Points from

violations in which the assigned number points are two or less shall be considered a part of the driving record only for purposes of point reduction pursuant to section 39-06.1-13 and for purposes of license suspension. When the driving record shows that the licensee has an accumulated point total of twelve or more points, assigned on the basis of the schedule contained in subsection 3, the authority shall notify the licensee of its intention to suspend the operator's license according to the provisions of section 39-06-33. For the purposes of this chapter, the licensing authority may also receive and act on reports of traffic offense convictions forwarded by federal, military, and tribal courts in this state.

2. If the licensing authority confirms, after hearing or opportunity for hearing, that the licensee's driving record has an accumulated point total of twelve or more points, the licensing authority shall suspend the licensee's operator's license according to the following schedule:

Accumulated Point Total:	Period of Suspension:
a. Twelve	7 days
b. Thirteen and above	7 days for each point over eleven

Surrender and return of licenses suspended pursuant to this section must be governed by the provisions of section 39-06-37.

3. Points must be assigned and accumulated on the basis of the following schedule:

Noncriminal Violations Noncriminal Adjudication or Admission of:	Points Assigned:
(1) Overtime and double parking in violation of city ordinances	0 points
(2) Failure to display license plates	1 point
(3) Permitting unauthorized minor to drive	2 points
(4) Permitting unauthorized person to drive	2 points
(5) Unlawful stopping, standing, or parking on open highway in violation of section 39-10-47	2 points
(6) Unlawful parking in prohibited place	1 point

- | | | |
|------|--|-----------|
| (7) | Leaving motor vehicle improperly unattended on an open highway | 1 point |
| (8) | Opening or leaving motor vehicle doors open when unsafe to do so | 1 point |
| (9) | Except as provided in sections 39-21-44 and 39-21-45.1, knowingly driving with defective, nonexistent, or unlawful equipment in violation of <u>subdivision a of subsection 1 of section 39-21-46</u> , or equivalent ordinances | 2 points |
| (10) | Careless driving in violation of section 39-09-01, or equivalent ordinance | 6 points |
| (11) | Violating or exceeding restrictions contained in a restricted certificate issued pursuant to section 39-06.1-03 | 4 points |
| (12) | Racing or drag racing motor vehicles in violation of section 39-08-03.1, or equivalent ordinance | 10 points |
| (13) | Exhibition driving in violation of section 39-08-03.1, or equivalent ordinance | 3 points |
| (14) | Failing to yield right of way in violation of section 39-10-20, 39-10-22 through 39-10-26, 39-10-28, 39-10-33.3, 39-10-44, or 39-10-72, or equivalent ordinances | 2 points |
| (15) | Disobeying an official traffic-control device in violation of section 39-10-04, 39-10-05, or 39-10-07, or equivalent ordinances | 2 points |
| (16) | Driving on wrong side of | 2 points |

- road in violation of section 39-10-08, 39-10-14, or 39-10-16, or equivalent ordinances
- (17) Failing to dim headlights in violation of section 39-21-21, or equivalent ordinance 1 point
- (18) Failing to stop at railroad crossing in violation of section 39-10-41 or 39-10-42, or equivalent ordinances 3 points
- (19) Knowingly driving with defective brakes in violation of section 39-21-32 or 39-21-33, or equivalent ordinances 2 points
- (20) Disregarding the lawful commands of a police officer in violation of section 39-10-02, or equivalent ordinance 2 points
- (21) Overtaking where prohibited or in an unsafe manner in violation of section 39-10-11, 39-10-12, 39-10-13, or 39-10-15, or equivalent ordinances 2 points
- (22) Overtaking and passing a schoolbus in violation of section 39-10-46, or equivalent ordinance 6 points
- (23) Operating a motor vehicle without a license in violation of section 39-06-01, or equivalent ordinance 4 points
- (24) Improperly operating or unlawfully carrying passengers or packages on a motorcycle in violation of section 39-10.2-02, or equivalent ordinance 2 points
- (25) Improperly operating a motorcycle in laned traffic in violation of section 39-10-2-02, or equivalent ordinance 2 points

	39-10.2-03, or equivalent ordinance	
(26)	Clinging to other vehicles while riding a motorcycle in violation of section 39-10.2-04, or equivalent ordinance	4 points
(27)	Carrying a passenger on a motorcycle not equipped with passenger footrests in violation of section 39-10.2-05, or equivalent ordinance	2 points
(28)	Operating a motorcycle without protective headgear in violation of subsection 1 of section 39-10.2-06, or equivalent ordinance	2 points
(29)	Failing to use the care required in section 39-09-01.1, or equivalent ordinance	2 points
(30)	Except as provided in paragraphs 31 and 34 <u>paragraph 33</u> of this subdivision, operating a motor vehicle in excess of speed limit in violation of section 39-09-02, or equivalent ordinance	
	46 - 20 mph over limit	3 points
	24 - 25 mph over limit	4 points
	26 - 35 mph over limit	6 points
	36 - 45 mph over limit	8 points
	46 + mph over limit	12 points
(31)	Within city limits on a noncontrolled access highway, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance	
	6 - 10 mph over limit	4 point <u>0 points</u>
	11 - 15 mph over limit	2 points <u>1 point</u>
	16 - 20 mph over limit	3 points
	21 - 25 mph over limit	4 <u>5</u> points
	26 - 35 mph over limit	6 <u>9</u> points
	36 - 45 mph over limit	8 <u>12</u> points
	46 + mph over limit	12 <u>15</u> points

~~(32)~~ (31) Driving in violation of section 39-08-18 2 points

~~(33)~~ (32) Driving in violation of section 39-08-09 6 points

~~(34)~~ (33) On a highway on which the speed limit is a ~~speed higher than fifty-five miles~~ speed higher than fifty-five miles [88.51 kilometers] ~~posted in excess of seventy miles~~ [112.65 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
<u>1 - 5</u>	<u>0</u>
<u>6 - 10</u>	<u>1</u>
<u>11 - 15</u>	<u>4</u>
<u>16 - 25 <u>20</u></u>	<u>7</u>
<u>21 - 25</u>	<u>7</u>
<u>26 - 35 <u>30</u></u>	<u>10</u>
<u>31 - 35</u>	<u>12</u>
<u>36 +</u>	<u>15</u>

~~(35)~~ (34) Failing to have a minor in a child restraint system or seatbelt in violation of section 39-21-41.2 1 point

(35) Failure or refusal to comply with rules of the superintendent of the highway patrol in violation of subsection 2 of section 39-21-46 0 points

(36) Violation of section 39-21-44 or any rule adopted under that section 2 points

b. Criminal Violations

Conviction of: Points Assigned:

(1) Reckless driving in violation of section 39-08-03, or equivalent ordinance 8 points

(2) Aggravated reckless driving in violation of section 39-08-03, or equivalent ordinance 12 points

(3) Leaving the scene of an accident involving 14 points

- property damage in violation of section 39-08-05, 39-08-07, or 39-08-08, or equivalent ordinances
- (4) Leaving the scene of an accident involving personal injury or death in violation of section 39-08-04, or equivalent ordinance 18 points
- (5) Violating restrictions in a restricted license issued under section 39-06-17 and relating to the use of eyeglasses or contact lenses while driving 3 points
- (6) Violating any restrictions other than those listed in paragraph 5, contained in a restricted license issued under section 39-06-17 or 39-06.1-11 4 points
- (7) Except as provided in paragraph 9, operating a motor vehicle without liability insurance, in violation of section 39-08-20 6 points
- (8) Knowingly driving a modified motor vehicle in violation of section 39-21-45.1, or equivalent ordinance 2 points
- (9) Operating a motor vehicle without liability insurance, in violation of section 39-08-20, if the violation was discovered as the result of investigation of an accident in which the driver is the owner 14 points
- (10) ~~Knowingly failing to display a placard or flag, in violation of any rule implementing section 39-21-44, while transporting explosive or hazardous materials~~ 2 points

- | | | | |
|-----------------|------|---|-----------|
| (41) | (11) | Except as provided in paragraph 9 of subdivision a, knowingly operating an unsafe vehicle in violation of <u>subdivision b of subsection 1 of section 39-21-46, or equivalent ordinance</u> | 2 points |
| (42) | (11) | Fleeing in a motor vehicle from a peace officer in violation of section 39-10-71, or equivalent ordinance | 24 points |
| (43) | (12) | Except as provided in paragraph 9, operating a motor vehicle without liability insurance, in violation of section 39-08-20, if the driving record shows that the licensee has within the eighteen months preceding the violation previously violated section 39-08-20 | 12 points |
- 3.1. a. If the director is informed by a court that a person has been convicted of violating section 39-08-01, or equivalent ordinance, the director, subject to the offender's opportunity for hearing under subsection 1, may not restore the operator's license to the offender until the offender furnishes to the director the written statement of the counselor or instructor of an appropriate licensed addiction treatment program that the offender does not require either an education or treatment program or that the offender has physically attended the prescribed program and has complied with the attendance rules. The director shall send notice to the offender informing the offender of the provisions of this subsection.
- b. If within the seven years preceding the most recent violation of section 39-08-01, or equivalent ordinance, the offender has previously violated section 39-08-01, or equivalent ordinance, at least three times, the director may restore driving privileges to the offender only after that person has completed addiction treatment through an appropriate licensed addiction treatment program and has had no alcohol-related or drug-related offense for two consecutive years after completion of treatment.
4. If judicial disposition of a traffic violation includes an order or recommendation of suspension or revocation of an operator's license, the suspension or revocation runs concurrently with any suspension ordered under this section. After a conviction of a person for violating section 39-08-01, the director shall, in suspending the person's operator's license, give credit for the time in which license suspension or revocation has been or is being imposed under chapter 39-20 in connection with the same offense.

5. A suspension must be deemed to have commenced twenty days after the order of suspension is delivered to the licensee at the licensee's address of record in the department. Constructive delivery under this section must be considered as occurring seventy-two hours after proper deposit in the mails.
6. Points assigned pursuant to this section must be recorded against an operator's driving record regardless of whether the operator has ever had an operator's license issued in this state, and the licensing authority shall maintain records on all violators regardless of whether they are licensed. Upon the assignment of twelve or more points, any unlicensed operator must be deemed to be driving under suspension if the operator has never had an operator's license or if the operator has failed to renew the operator's license.
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.
 - b. 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.
 - c. Two years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation.

SECTION 6. AMENDMENT. Subdivision g of subsection 2 of section 39-07-09 of the North Dakota Century Code is amended and reenacted as follows:

- g. Operating an unsafe vehicle in violation of subdivision b of subsection 1 of section 39-21-46.

¹⁶⁷ **SECTION 7. AMENDMENT.** Subsection 6 of section 39-12-05.3 of the North Dakota Century Code as amended by Senate Bill No. 2054, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

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 does not exceed eighty thousand pounds [38287.39 kilograms]. 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 does not exceed forty-five thousand pounds [20411.66 kilograms]. The highway

¹⁶⁷ Section 39-12-05.3 was also amended by section 1 of Senate Bill No. 2054, chapter 353.

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, ~~except a vehicle exempted by this subsection which is an implement of husbandry is not required to have proof of financial responsibility and does not have to be operated by a commercial entity.~~

SECTION 8. AMENDMENT. Subsection 1 of section 39-21-46 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~to be in such unsafe condition as to endanger any person, or 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. ~~Unless otherwise specifically provided in this chapter or in section 39-06.1-08 or 39-06.1-09, any~~ A person who, ~~in violation of this chapter,~~ 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 or improperly equipped condition as to endanger a person is guilty of an infraction.

SECTION 9. AMENDMENT. Subsection 2 of section 39-21-46 of the North Dakota Century Code is amended and reenacted as follows:

2. 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. ~~Any proceeding under this section for issuing or modifying rules and determining compliance with rules of the superintendent of the state highway patrol must be conducted in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32. 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 section 3 of this Act for each violation.~~

SECTION 10. EXPIRATION DATE. Section 7 of this Act is effective through July 31, 2003, and after that date is ineffective.

SECTION 11. EMERGENCY. This Act is declared to be an emergency measure.

Approved May 4, 2001

Filed May 8, 2001

CHAPTER 342

HOUSE BILL NO. 1239

(Representatives Carlisle, Kempenich, B. Thoreson, Weiler)
(Senators Klein, Stenehjem)

SCHOOL ZONE SPEED VIOLATION FEES

AN ACT to amend and reenact sections 39-06.1-06 and 39-09-02 of the North Dakota Century Code, relating to the fees for violating school zone speed limits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁸ **SECTION 1. AMENDMENT.** Section 39-06.1-06 of the 1999 Supplement to 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 subsection 8 or 10 of section 39-06.1-06, 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

¹⁶⁸ Section 39-06.1-06 was also amended by section 2 of Senate Bill No. 2088, chapter 341.

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. Repealed by S.L. 1985, ch. 430, § 4.
7. 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.
8. 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	\$ 10 plus \$1/each mph over limit
6 - 10	\$ 15 plus \$2/each mph over 5 mph over limit
11 - 15	\$ 25 plus \$3/each mph over 10 mph over limit
16 - 25	\$ 40 plus \$3/each mph over 15 mph over limit
26 - 35	\$ 70 plus \$3/each mph over 25 mph over limit
36 +	\$100 plus \$5/each mph over 35 mph over limit
9. For a violation of section 39-21-41.4, a fee not to exceed twenty dollars.
10. 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".

¹⁶⁹ **SECTION 2. AMENDMENT.** Section 39-09-02 of the North Dakota Century Code is amended and reenacted as follows:

¹⁶⁹ Section 39-09-02 was also amended by section 7 of Senate Bill No. 2012, chapter 37. Section 7 of Senate Bill No. 2012 was vetoed by the Governor, see chapter 586.

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].
 - 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. If there is a violation of a highway construction zone speed limit, where within that zone individuals engaged in construction were present at the time of the violation, then the fees required 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. However, if a greater fee would be applicable under section ~~39-06.1-06~~, then that fee is required for the noncriminal disposition. The highway construction zone speed limit posted sign must state "Minimum Fee \$40".
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.
5. ~~Repealed by S.L. 1975, ch. 346, § 3.~~

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 343

HOUSE BILL NO. 1191

(Representative Keiser)

DIPLOMAT TRAFFIC OFFENSE DISPOSITION

AN ACT to create and enact a new section to chapter 39-06.1 of the North Dakota Century Code, relating to the disposition of traffic offenses for diplomats.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-06.1 of the North Dakota Century Code is created and enacted as follows:

Diplomatic immunities and privileges.

1. This section applies only to an individual who displays a driver's license issued by the United States department of state to a law enforcement officer or who otherwise claims immunities or privileges under chapter 6 of title 22 of the United States Code with respect to the individual's violation of any law or ordinance that relates to the operation of a motor vehicle.
2. If a driver who is subject to this section is stopped by a law enforcement officer who has probable cause to believe that the driver has committed a violation, the law enforcement officer shall record all relevant information from any driver's license or identification card, including a driver's license or identification card issued by the United States department of state; as soon as practicable contact the United States department of state office in order to verify the driver's status and immunity, if any; and forward the following to the bureau of diplomatic security office of foreign missions of the United States department of state:
 - a. A vehicle accident report, if the driver was involved in a vehicle accident;
 - b. A copy of the citation or other charging document if a citation or other charging document was issued to the driver; and
 - c. A written report of the incident if a citation or other charging document was not issued to the driver.
3. This section does not prohibit or limit the application of any law to a criminal or motor vehicle violation by an individual who has or claims immunities or privileges under title 22 of the United States Code.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 344

HOUSE BILL NO. 1175

(Transportation Committee)

(At the request of the Department of Transportation)

COMMERCIAL MOTOR VEHICLE OPERATION

AN ACT to amend and reenact section 39-06.2-01, subdivision b of subsection 2 of section 39-06.2-09, and section 39-06.2-10 of the North Dakota Century Code, relating to driving a commercial motor vehicle; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06.2-01 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-01. Uniform Commercial Driver's License Act. The purpose of this chapter is to implement the federal Commercial Motor Vehicle Safety Act of 1986 [Title XII of Pub. L. 99-570, 49 U.S.C. 2701, repealed] and Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106-159; 113 Stat. 1748; 49 U.S.C. 113 et seq.] and reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by:

1. Permitting commercial drivers to hold only one license;
2. Disqualifying commercial drivers who have committed certain serious traffic violations, or other specified offenses; and
3. Strengthening commercial driver's licensing and testing standards.

This chapter is a remedial law which should be liberally construed to promote the public health, safety, and welfare. To the extent that this chapter conflicts with general driver's licensing provisions, this chapter prevails. Where this chapter is silent, the general driver's licensing provisions apply.

¹⁷⁰ **SECTION 2. AMENDMENT.** Subdivision b of subsection 2 of section 39-06.2-09 of the North Dakota Century Code is amended and reenacted as follows:

- b. Endorsements and restrictions.
 - (1) "H" - authorizes the driver to drive a vehicle transporting hazardous materials.
 - (2) "T" - authorizes driving double and triple trailers.
 - (3) "P" - authorizes driving vehicles carrying passengers.

¹⁷⁰ Section 39-06.2-09 was also amended by section 6 of Senate Bill No. 2012, chapter 37.

- (4) "N" - authorizes driving tank vehicles.
- (5) "X" - combinations of tank vehicles and hazardous material vehicles.
- (6) "S" - authorizes driving a school bus.

Other restrictions may be placed upon a commercial driver's license, as provided in section 39-06-17. The applicant shall pay a fee of three dollars for each endorsement.

SECTION 3. 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 2 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. 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.

- ~~7.~~ 8. 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.

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 345

HOUSE BILL NO. 1199

(Representatives Devlin, DeKrey, Severson)
(Senators Fischer, Klein, Stenehjem)

COMMERCIAL DRIVER'S LICENSE EXCEPTIONS

AN ACT to create and enact a new subsection to section 39-06.2-06 of the North Dakota Century Code, relating to exceptions from a commercial driver's license requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-06.2-06 of the North Dakota Century Code is created and enacted as follows:

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.

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 346

HOUSE BILL NO. 1218

(Representatives Carlisle, R. Kelsch, Maragos)
(Senators Lyson, Robinson, Stenehjem)

DRIVING UNDER THE INFLUENCE

AN ACT to amend and reenact subsection 4 of section 39-08-01 of the North Dakota Century Code, relating to driving under the influence of intoxicating liquor or any other drug or substance; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷¹ **SECTION 1. AMENDMENT.** Subsection 4 of section 39-08-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

¹⁷¹ Section 39-08-01 was also amended by section 1 of Senate Bill No. 2406, chapter 347.

must be served consecutively ~~and~~; 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.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

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

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 347**SENATE BILL NO. 2406**

(Senators Flakoll, Fischer)

(Representatives Berg, DeKrey, Koppelman, Mahoney)

**DRIVING UNDER THE INFLUENCE INMATE
PLACEMENT**

AN ACT to create and enact a new subsection to section 39-08-01 of the North Dakota Century Code, relating to inmate placement for driving while under the influence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷² **SECTION 1.** A new subsection to section 39-08-01 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

As used in subdivision b of subsection 4 of this section, 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 29, 2001

Filed March 29, 2001

¹⁷² Section 39-08-01 was also amended by section 1 of House Bill No. 1218, chapter 346.

CHAPTER 348

HOUSE BILL NO. 1266

(Representatives Aarsvold, Nottestad, Wald)
(Senators Lyson, Wardner)

LEAVING SCENE OF ACCIDENT PENALTY

AN ACT to amend and reenact section 39-08-04 of the North Dakota Century Code, relating to leaving the scene of an accident; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-08-04 of the North Dakota Century Code is amended and reenacted as follows:

39-08-04. Accidents involving death or personal injuries - Penalty.

1. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop or return with the vehicle as close as possible to the scene of the accident and in every event shall remain at the scene of the accident until that driver has fulfilled the requirements of section 39-08-06. Every stop required by this section must be made without obstructing traffic more than is necessary.
2. Any person failing to comply with the requirements of this section under circumstances involving personal injury is guilty of a class A misdemeanor. Any person negligently failing to comply with the requirements of this section under circumstances involving serious personal injury ~~or death~~ is guilty of a class C felony. Any person negligently failing to comply with the requirements of this section under circumstances involving death is guilty of a class B felony.
3. The director shall revoke the license or permit to drive or nonresident operating privilege of a person convicted under this section.

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 349

HOUSE BILL NO. 1459

(Representatives DeKrey, Delmore, Weiler)
(Senators D. Mathern, Wardner)

MOTOR FUEL THEFT AND PENALTY

AN ACT to create and enact a new section to title 39 of the North Dakota Century Code, relating to theft of motor fuels; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to title 39 of the North Dakota Century Code is created and enacted as follows:

Nonpayment for motor fuels - Penalty.

1. For a theft offense in violation of chapter 12.1-23 which involves a person who leaves the premises of an establishment at which motor fuel is offered for retail sale after motor fuel was dispensed into the fuel tank of a motor vehicle that that person drove away without having made due payment or authorized charge for the motor fuel dispensed, the court may:
 - a. Upon a person's second conviction, order the suspension of the person's driving privileges for up to three months; and
 - b. Upon a person's third or subsequent conviction, order the suspension of the person's driving privileges for up to six months.
2. As used in this section, "conviction" means a final conviction without regard to whether sentence was suspended or deferred or probation was granted after the conviction. Forfeiture of bail, bond, or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, is equivalent to conviction.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 350

SENATE BILL NO. 2390

(Senators Tallackson, Holmberg, T. Mathern)
(Representative Schmidt)

EMERGENCY VEHICLE PASSING

AN ACT to amend and reenact section 39-10-26 of the North Dakota Century Code, relating to passing an authorized emergency vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-10-26 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-10-26. Operation of vehicle on approach of authorized emergency vehicle.

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. ~~Whenever~~ 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.

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 351

HOUSE BILL NO. 1452

(Representative Grosz)
(Senator Espegard)

EXPERIMENTAL VEHICLES

AN ACT to create and enact a new chapter to title 39 of the North Dakota Century Code, relating to experimental vehicles; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 39 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Chase vehicle" means a motor vehicle that accompanies an experimental vehicle while operating on a highway.
2. "Experimental vehicle" means a vehicle with an unladen weight of six thousand pounds [2721.55 kilograms] or less which may be equipped with any configuration of axles and wheels and which is primarily powered by some source other than a combustion engine, muscle, or an animal.

Applicability. An experimental vehicle is a motor vehicle under this title, except:

1. Chapter 39-22 does not apply to experimental vehicles.
2. Registration of an experimental vehicle is governed by this chapter.
3. The governing body of a political subdivision may regulate, restrict, or prohibit the use of an experimental vehicle operating within the political subdivision's corporate limits in areas under the jurisdiction of the political subdivision.

Experimental vehicle registration - Application - Issuance - Fees - Renewal.

1. An individual may not operate an experimental vehicle unless the vehicle has been registered in accordance with this chapter.
2. The department shall design and furnish an application that must be used to register an experimental vehicle. The registration must state the name and address of every owner of the experimental vehicle and must be signed by at least one owner. A copy of the application is evidence of registration for the first thirty days after the date of application.
3. On receipt of an application and the appropriate fee, the department shall register the experimental vehicle and assign a registration number

and a certificate of registration. The certificate of registration must include information regarding name and address of the owner.

4. The fee for registration of an experimental vehicle is fifty dollars for each registration cycle of one year ending on March thirty-first. The department may prorate the initial registration fee. For a duplicate or replacement registration number or registration card that is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars.
5. To renew a registration, the owner of an experimental vehicle shall follow the procedure adopted by the department and pay the registration fee.
6. The department may adopt rules for the registration of experimental vehicles and the display of registration numbers.

Exemption from fees. Payment of fees is not required of an experimental vehicle owned and used by the United States, a state or any of its agencies, institutions, or political subdivisions; an experimental vehicle registered in a foreign country and temporarily used in this state; or an experimental vehicle validly licensed in another state and which has not been in this state for more than thirty consecutive days.

Transfer or termination of experimental vehicle ownership - Change of address of owner. Within fifteen days of a transfer of any ownership interest in an experimental vehicle, other than a security interest, the destruction or abandonment of any experimental vehicle, or a change of address of the owner as listed with the application for registration, written notice of the fact must be given by the last registered owner to the director in the form the director requires.

Rules of operation. A person may not operate an experimental vehicle on a highway without being accompanied by a chase vehicle. The chase vehicle must follow the experimental vehicle at a safe-driving distance.

Equipment. An experimental vehicle must be equipped with a horn, front and rear turn signal lamps, stop lamps, a balanced and coreactive dual-braking system, a windshield, a safety belt installed at each seating position, an exterior mirror mounted on the operator's side of the vehicle, a roll cage that encompasses the entire driver, fresh air intake vents or wheel openings, and either an exterior mirror mounted on the passenger's side of the vehicle or an interior rearview mirror.

Penalty. A violation of this chapter for which there is no penalty in this title is a class B misdemeanor.

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

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 352

SENATE BILL NO. 2089

(Transportation Committee)
(At the request of the Highway Patrol)

VEHICLE SPECIAL PERMIT FEES

AN ACT to amend and reenact subsection 3 of section 39-12-02 of the North Dakota Century Code, relating to special permit fees for vehicles of excess size and weight.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 39-12-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. An appropriate charge must be made for each permit and all funds collected hereunder by the highway patrol must be deposited in the state highway fund for use in the construction and maintenance of highways and operating expenses of the department of transportation. Official or publicly owned vehicles may not be required to pay 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.
 - 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 ~~filing~~ faxing a permit is five dollars ~~per trip~~.
 - f. The fee for a single trip permit is twenty dollars per trip.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 353

SENATE BILL NO. 2054

(Senators Solberg, O'Connell, Wanzek)
(Representatives Aarsvold, Nelson, Rennerfeldt)

HIGHWAY WEIGHT LIMITATIONS

AN ACT to amend and reenact section 39-12-05.3 of the North Dakota Century Code, relating to weight limitations on highways; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷³ **SECTION 1.** Section 39-12-05.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-12-05.3. Weight limitations for vehicles on highways other than the interstate system.

1. A person may not operate on a highway; ~~which~~ that is not part of the interstate system; any vehicle:
4. ~~With~~ 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

¹⁷³ Section 39-12-05.3 was also amended by section 7 of Senate Bill No. 2088, chapter 341.

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.
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 does not exceed eighty thousand pounds [38287.39 kilograms]. 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 does not exceed forty-five thousand pounds [20411.66 kilograms]. The highway patrol shall issue a seasonal permit for the 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, except a vehicle exempted by this subsection which is an implement of husbandry is not required to have proof of financial responsibility and does not have to be operated by a commercial entity.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

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

Approved April 23, 2001

Filed April 23, 2001

CHAPTER 354

SENATE BILL NO. 2087

(Transportation Committee)
(At the request of the Highway Patrol)

HOURS OF SERVICE EXEMPTIONS

AN ACT to amend and reenact section 39-32-02 of the North Dakota Century Code, relating to intrastate exemptions from federal hours of service provisions for intrastate drivers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-32-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-32-02. Intrastate exemptions from federal hours of service provisions.

1. The following intrastate drivers are not subject to hours of service limitations:
 - a. A driver of an authorized emergency vehicle.
 - b. A driver who operates a motor vehicle that has a manufacturer's gross vehicle weight rating equal to or less than twenty-six thousand pounds [11793.40 kilograms] and that is not transporting hazardous materials.
 - c. A driver of a tow truck operating at the request of a law enforcement officer.
2. Except for a driver included in subsection 1, a motor carrier may not permit or require any intrastate driver to drive and an intrastate driver may not drive:
 - a. More than twelve hours following eight consecutive hours off duty.
 - b. For any period after having been on duty more than fifteen hours.
 - c. After having been on duty for seventy hours in any period of seven consecutive days.
3. ~~Following twenty-four consecutive hours off, an intrastate driver begins a new seven-consecutive-day period and on-duty time is reset to zero.~~
4. Hours of service limitations do not apply to an intrastate driver when transporting property or passengers during a declared emergency. The employer must declare and document that the emergency is necessary to assure the protection of public health and safety or to provide other essential assistance to the public. An employer shall maintain documentation for one year and shall make it available upon request of a law enforcement officer. Under this subsection, an emergency is the

result of any natural activities, including a tornado, windstorm, thunderstorm, snowstorm, ice storm, blizzard, drought, mudslide, flood, high water, earthquake, forest fire, explosion, blackout, or other occurrence, natural or manmade, which interrupts delivery of essential services, such as electricity, medical care, sewer, water, telecommunications transmissions, or essential supplies, such as food and fuels, or otherwise threatens human life or public welfare.

5. 4. An intrastate driver is exempt from maintaining a record of duty status if:
- a. The driver operates within a one hundred fifty air-mile radius from the driver's normal work reporting location or from the official worksite of the vehicle;
 - b. At least eight consecutive hours off duty separate each twelve hours on duty;
 - c. The driver, except for a driver salesperson, returns to the work reporting location and is released from work within twelve consecutive hours; and
 - d. The motor carrier maintains and retains for a period of six months accurate time records showing the time the driver reports for duty and is released from duty each day.

Approved March 12, 2001
Filed March 12, 2001

CHAPTER 355

HOUSE BILL NO. 1174

(Transportation Committee)

(At the request of the Department of Transportation)

DRIVER AND VEHICLE RECORDS PRIVACY

AN ACT to amend and reenact sections 39-33-01, 39-33-02, and 39-33-05 of the North Dakota Century Code, relating to privacy of driver and motor vehicle records; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-33-01 of the North Dakota Century Code is amended and reenacted as follows:

39-33-01. Definitions. As used in this chapter:

1. "Department" means the department of transportation, or an authorized agent or contractor of the department responsible for compiling and maintaining motor vehicle records.
2. "Disclose" means to engage in any practice or conduct to make available and make known personal information contained in a motor vehicle record about a person to any other person by any means of communication.
3. "Express consent" means consent in writing, including consent conveyed electronically which bears an electronic signature as defined by law.
4. "Highly restricted personal information" means an individual's photograph or image, social security number, and medical or disability information.
5. "Individual record" means a motor vehicle record containing personal information about a designated person who is the subject of the record as identified in a request.
4. ~~6.~~ "Motor vehicle record" means any record that pertains to a motor vehicle operator's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by the department, or other state or local agency authorized to issue any of such forms of credentials. A record includes all books, papers, photographs, photostats, cards, films, tapes, recordings, electronic data, printouts, or other documentary materials regardless of physical form or characteristics.
5. ~~7.~~ "Person" does not include an agency of this state.
6. ~~8.~~ "Personal information" means information that identifies a person, including an individual's photograph or computerized image, social security number, driver identification number, name, address, telephone number, and medical or disability information. The term does not

include the five-digit zip code of an address, information on vehicular accidents, driving or equipment-related violations, and operator's license or registration status.

SECTION 2. AMENDMENT. Section 39-33-02 of the North Dakota Century Code is amended and reenacted as follows:

39-33-02. Disclosure and use of personal information from department records prohibited.

1. Notwithstanding any other provision of law, except as provided in sections 39-33-03, 39-33-04, and 39-33-05, the department may not knowingly disclose personal information about any person obtained by the department in connection with a motor vehicle record.
2. Notwithstanding any other provision of law, except as provided in subsections 1, 4, 6, and 9 of section 39-33-05, the department may not knowingly disclose highly restricted personal information about any person without the express consent of the person to whom such information pertains. This does not in any way affect the use of organ donation information on an individual's operator's license or affect the administration of organ donation initiatives in the state.

SECTION 3. AMENDMENT. Section 39-33-05 of the North Dakota Century Code is amended and reenacted as follows:

39-33-05. Permitted disclosures. The department may disclose personal information referred to in section 39-33-02 to any person, on proof of the identity of the person requesting a record and representation by the requester that the use of the personal information will be strictly limited to one or more of the following:

1. For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person acting on behalf of a government agency in carrying out its functions.
2. For use in connection with matters of motor vehicles or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.
3. For use in the normal course of business by a legitimate business or its agents, employees, or contractors:
 - a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - b. If the information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
4. For use in connection with any proceeding in any court or government agency or before any self-regulatory body, including the service of

- process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court.
5. For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
 6. For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.
 7. For use in providing notice to the owner or lienholder of a towed or impounded vehicle.
 8. For use by any licensed private investigative agency or licensed security service for any purpose permitted under this section.
 9. For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license which is required under the Commercial Motor Vehicle Safety Act of 1986 [title XII of Pub. L. 99-570].
 10. For use in connection with the operation of private toll transportation facilities.
 11. For any use specifically authorized by law that is related to the operation of a motor vehicle or public safety.
 12. For any other use in response to requests for individual motor vehicle records if the department has ~~provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations, or identification cards, notice that personal information collected by the department may be disclosed to any person, and the department has provided in a clear and conspicuous manner on the forms an opportunity to prohibit disclosure~~ obtained the express consent of the person to whom such personal information pertains.
 13. For bulk distribution for surveys, marketing, or solicitations if the department ~~of transportation has implemented methods and procedures to ensure that:~~
 - a. ~~Individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit these uses; and~~
 - b. ~~The information disclosed may not be used for surveys, marketing, or solicitations directed at the individuals choosing to prohibit these uses~~ has obtained the express consent of the person to whom such personal information pertains.

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

CHAPTER 356**SENATE BILL NO. 2027**

(Legislative Council)
(Budget Committee on Government Services)

MOTOR VEHICLE BRANCH OFFICE PILOT PROJECT

AN ACT relating to a pilot project involving county treasurers administering motor vehicle registration programs; to provide for a legislative council study; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. MOTOR VEHICLE BRANCH OFFICE PILOT PROJECT. By January 1, 2002, the director of the department of transportation shall establish a pilot project branch office at three sites within Bowman, Emmons, and McKenzie counties to administer motor vehicle registration programs similar to other branch offices established under North Dakota Century Code section 39-02-03. The department shall pay the training costs of the personnel necessary to implement the pilot project. The pilot project branch offices are in addition to other branch offices established by the director. The treasurer of the county in which a pilot project is located shall operate the office.

SECTION 2. LEGISLATIVE COUNCIL STUDY - PILOT PROJECT. The legislative council shall consider studying, during the 2003-04 interim, the efficiency and effectiveness of each motor vehicle branch office included in the motor vehicle branch office pilot project.

SECTION 3. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2005, and after that date is ineffective.

Approved April 9, 2001
Filed April 10, 2001

MUNICIPAL GOVERNMENT

CHAPTER 357

SENATE BILL NO. 2253 (Senators Lyson, Stenehjem, Wardner)

CITY COUNCIL MEMBER COMPENSATION

AN ACT to amend and reenact sections 40-04.1-02, 40-08-07, and 40-09-06 of the North Dakota Century Code, relating to the salary of city council members and commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-04.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-04.1-02. Compensation of council members. The members of the council ~~shall~~ are entitled to receive such compensation for their services as is fixed by ordinance; ~~but not more than the maximum provided for the members of the governing board under any other form of city government.~~

SECTION 2. AMENDMENT. Section 40-08-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-08-07. Compensation of council members. Each council member is entitled to receive compensation for services as established by ordinance; ~~but the compensation may not exceed the following limitations based upon the population of the city according to the latest state or federal census:~~

1. ~~In cities not exceeding two thousand in population, sixty dollars per month.~~
2. ~~In cities over two thousand and not exceeding six thousand in population, one hundred dollars per month.~~
3. ~~In cities over six thousand and not exceeding thirty thousand in population, one hundred ninety-five dollars per month.~~
4. ~~In cities having a population of over thirty thousand, four hundred forty-five dollars per month.~~

SECTION 3. AMENDMENT. Section 40-09-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-09-06. Style of board - Oath and salary of commissioners. The commissioners and the president of the board constitute the board of city commissioners and shall take an oath faithfully to perform the duties of their respective offices. The monthly salary of each city commissioner must be fixed by

ordinance, but the compensation shall not exceed the following limitations based upon the population of the city according to the latest state or federal census:

1. In cities not exceeding one thousand in population, fifty dollars.
2. In cities over one thousand and not exceeding two thousand in population, sixty dollars.
3. In cities over two thousand and not exceeding four thousand in population, ninety dollars.
4. In cities over four thousand and not exceeding six thousand in population, one hundred twenty dollars.
5. In cities over six thousand and not exceeding eight thousand in population, two hundred five dollars.
6. In cities over eight thousand and not exceeding twelve thousand in population, two hundred seventy dollars.
7. In cities over twelve thousand and not exceeding thirty thousand in population, three hundred ninety dollars.
8. In cities over thirty thousand and not exceeding forty thousand in population, six hundred sixty dollars.
9. In cities having a population of over forty thousand, eight hundred ten dollars.

The president of a commission may receive a salary of up to fifty percent more than the level set for each commissioner upon resolution by the board of city commissioners.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 358

SENATE BILL NO. 2146

(Political Subdivisions Committee)
(At the request of the Secretary of State)

HOME RULE CHARTER FILING

AN ACT to amend and reenact section 40-05.1-05 of the North Dakota Century Code, relating to the places to file home rule charter; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-05.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-05.1-05. Ratification by majority vote - Supersession of existing charter and state laws in conflict therewith - Filing of copies of new charter. If a majority of the qualified voters voting on the charter at the election vote in favor of the home rule charter, the charter is ratified and is the organic law of the city, and extends to all its local and city matters. The charter and the ordinances made pursuant to the charter in such matters supersede within the territorial limits and other jurisdiction of the city any law of the state in conflict with the charter and ordinances, and must be liberally construed for such purposes. One copy of the charter ratified and approved must be filed with the secretary of state; ~~one with the register of deeds for the county in which the city is located, unless the board of county commissioners designates a different official;~~ and one with the auditor of the city to remain as a part of its permanent records. Thereupon the courts shall take judicial notice of the new charter.

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

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 359

SENATE BILL NO. 2033 (Legislative Council) (Commerce and Labor Committee)

RENAISSANCE ZONES

AN ACT to create and enact a new section to chapter 40-63 of the North Dakota Century Code, relating to renaissance zone tax benefit requirements; to amend and reenact sections 40-63-01, 40-63-02, 40-63-03, 40-63-04, 40-63-05, 40-63-06, 40-63-07, 40-63-09, and 40-63-10 of the North Dakota Century Code, relating to renaissance zones; to repeal section 40-63-08 of the North Dakota Century Code, relating to renaissance zone contribution use; and to provide for an application date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁴ **SECTION 1. AMENDMENT.** Section 40-63-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-63-01. Definitions. As used in this chapter:

1. "Boundary" means the boundary established by vote of the city governing body and approved by the ~~office of intergovernmental assistance~~ division of community services.
2. "Development plan" means a written plan that addresses the criteria in subsection 1 of section 40-63-03 and includes the following:
 - a. A map of the proposed renaissance zone which indicates the geographic boundaries ~~and blocks, the total area, and the present use and conditions of the land and structures within those boundaries~~ a description of the properties and structures on each block, identification of those properties and structures to be targeted for potential zone projects, and a description of the present use and conditions of the targeted properties and structures.
 - b. A description of the existing physical assets, in particular natural or historical assets, of the zone and a plan for the incorporation and enhancement of the assets within the proposed development.
 - c. An outline of goals and objectives and proposed outcomes, including major milestones or benchmarks, by which to gauge success resulting from the designation of the zone.

¹⁷⁴ Section 40-63-01 was also amended by section 12 of House Bill No. 1049, chapter 55.

- d. A description of ~~proposed~~ the types of projects including public and private investments, and the programming and planned events to support and enhance the projected investments the city would encourage in the city's targeted properties.
 - e. A description of the promotion, development, and management strategies to maximize investment in the zone.
 - f. A plan for the development, promotion, and use of the a renaissance fund ~~corporation~~ organization, including commitments by one or more investors to the corporation, if such use one is intended desired to be established. If a city is not ready to commit to establishing a renaissance fund organization, the city may indicate in the renaissance zone application the city's desire to submit a plan for approval at a later date.
 - g. Evidence of community support and commitment from residential and business interests.
3. "Investor" means the individual, partnership, limited partnership, limited liability company, trust, or corporation making an investment in a renaissance fund ~~corporation~~ organization.
 4. "Lease" means the lease of space in a building in a designated renaissance zone by a new business moving into the zone or by an existing zone business expanding in the zone, and the continuation of a lease of an existing zone tenant in a building rehabilitated as an approved zone project. For existing zone tenants expanding in the zone, the term does not include existing leased space.
 5. "Local zone authority" means the city or the entity designated by the city to promote, develop, and manage the zone and may include any nonprofit incorporated entity such as an economic development corporation, community development corporation, main street organization, or chamber of commerce.
- ~~5.~~ 6. "Original principal amount" means the funds invested in a renaissance fund ~~corporation~~ organization after designation of the renaissance zone and before the sunset of that zone.
 7. "Rehabilitation", as used in sections 40-63-04 and 40-63-05, means the repair or remodeling of a building at a cost that is equal to or exceeds fifty percent of the current true and full value for commercial buildings and twenty percent for single-family homes.
- ~~6.~~ 8. "Taxpayer" means an individual, corporation, financial institution, or trust subject to the taxes imposed by chapter 57-35.3 or 57-38 and includes a partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity.
 - ~~7.~~ 9. "Zone" means a renaissance zone proposed by a city and designated by the ~~office of intergovernmental assistance~~ division of community services.
- ~~8.~~ 10. "Zone project" means any project contained within a designated renaissance zone and the purchase, lease, rehabilitation, or historical

preservation or renovation of a building or space in a building approved for zone incentives by a majority vote of the city governing body or zone authority.

¹⁷⁵ **SECTION 2. AMENDMENT.** Section 40-63-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-63-02. Eligibility - Local zone authority designation. Any incorporated city may apply to the ~~office of intergovernmental assistance~~ division of community services to designate a portion of the city as a renaissance zone. Any individual, partnership, limited partnership, limited liability company, trust, or corporation may apply for a tax credit or exemption under sections 40-63-04 through 40-63-07. The governing body of a city may designate a local zone authority to implement a development plan on behalf of the city.

¹⁷⁶ **SECTION 3. AMENDMENT.** Section 40-63-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-63-03. Renaissance zones.

1. A city may apply to the ~~office of intergovernmental assistance~~ division of community services to designate a portion of that city as a renaissance zone if the following criteria are met:
 - a. The geographic area proposed for the renaissance zone is located wholly within the boundaries of the city submitting the application.
 - b. The application includes a development plan.
 - c. The proposed renaissance zone is not more than twenty square blocks.
 - d. The proposed renaissance zone has a continuous boundary and all blocks are contiguous.
 - e. The proposed land usage includes both commercial and residential property.
 - f. The application includes the proposed duration of renaissance zone status, not to exceed fifteen years.
2. The ~~office of intergovernmental assistance~~ division of community services shall:
 - a. Review all applications for renaissance zone designation against the criteria established in this section and designate zones.

¹⁷⁵ Section 40-63-02 was also amended by section 13 of House Bill No. 1049, chapter 55.

¹⁷⁶ Section 40-63-03 was also amended by section 14 of House Bill No. 1049, chapter 55.

- b. Approve or reject the duration of renaissance zone status as submitted in an application.
 - c. Approve or reject the geographic boundaries and total area of the renaissance zone as submitted in an application.
 - d. Promote the renaissance zone program.
 - e. Monitor the progress of the designated renaissance zones against submitted plans in an annual plan review.
 - f. Report on renaissance zone progress to the governor and the legislative council on an annual basis until all designated zones expire.
3. The ~~office of intergovernmental assistance~~ division of community services shall consider the following criteria in designating a renaissance zone:
 - a. The viability of the development plan.
 - b. The incorporation and enhancement of unique natural and historic features into the development plan.
 - c. Whether the development plan is creative and innovative in comparison to other applications.
 - d. Public and private commitment to and other resources available for the proposed renaissance zone, including the provisions for a renaissance fund ~~corporation~~ organization.
 - e. How renaissance zone designation would relate to a broader plan for the community as a whole.
 - f. How the local regulatory burden, in particular that burden associated with the renovation of historic properties and that burden associated with mixed use development, will be eased for developers and investors in the renaissance zone.
 - g. The strategies for the promotion, development, and management of the zone, including the use of a local zone authority if designated.
 - h. Any other information required by the office.
4. The ~~office of intergovernmental assistance~~ division of community services may not designate a portion of a city as a renaissance zone unless, as a part of the application, the city provides a resolution from the governing body of the city that states if the renaissance zone designation is granted, persons and property within the renaissance zone are exempt from taxes as provided in sections 40-63-04 through 40-63-07.
5. A city may not propose or be part of more than one renaissance zone.

6. A parcel of property may be exempted from property taxes under section 40-63-05 only once, but during the five taxable years of eligibility for that exemption, the property tax exemption transfers with the transfer of the property to a qualifying user. The ownership or lease of, or investment in, a parcel of property may qualify for exemption or credit under section 40-63-04 only once, but during the five taxable years of eligibility for that exemption or credit, the exemption or credit under section 40-63-04 transfers with the transfer of the property to a qualified user and with respect to the year in which the transfer is made must be prorated for use of the property during that year.
7. A city may apply to the 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. If the expansion is approved by the division of community services, the blocks in the expansion are eligible for up to fifteen years of renaissance zone status.
8. The use of grant funds as the sole source of investment in the purchase of a building or space in a building does not qualify a taxpayer for any tax exemption or credit available under the chapter, and grant funds may not be counted in determining if the cost of rehabilitation meets or exceeds the current true and full value of the building.
9. If after a minimum of five years a portion of an approved renaissance zone is not progressing, the city may request the division of community services to permit deleting that portion and to make a one-time adjustment of the boundaries to add another equal, contiguous area to the original zone.

SECTION 4. AMENDMENT. Section 40-63-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-63-04. Income tax exemptions.

1. An individual taxpayer who purchases or rehabilitates single-family residential property for the individual's primary place of residence as ~~part of~~ a zone project is exempt from up to ten thousand dollars of personal income tax liability as determined under section 57-38-29 or 57-38-30.3 for five taxable years beginning with the date of occupancy or completion of rehabilitation.
2. ~~A business~~ Any taxpayer that purchases ~~or~~, leases, or rehabilitates residential or commercial property for any business or investment purpose as part of a zone project is exempt from ~~income any tax on income derived from the business or investment locations within the zone for five taxable years, beginning in the year of the investment or lease for income derived from the business locations within the zone with the date of purchase, lease, or completion of rehabilitation.~~
3. ~~An individual, partnership, limited partnership, limited liability company, trust, or corporation that purchases residential or commercial property as an investment as part of a zone project is exempt from any income tax for five taxable years resulting from income earned from that investment~~ If the cost of a new business purchase or expansion of an existing business, approved as a zone project, exceeds seventy-five

thousand dollars, and the business is located in a city with a population of not more than two thousand five hundred, an individual taxpayer may, in lieu of the exemption provided in subsection 2, elect to take an income tax exemption of up to two thousand dollars of personal income tax liability as determined under section 57-38-29 or 57-38-30.3. The election must be made on the taxpayer's zone project application. The election is irrevocable and binding for the duration of the exemptions provided in subsection 2 or 3. If no election is made on the zone project application, the taxpayer is only eligible for the exemption provided in subsection 2.

4. The exemptions provided by this section do not eliminate any duty to file a return or to report income as required under chapter 57-35.3 or 57-38.

SECTION 5. AMENDMENT. Section 40-63-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-63-05. Property tax exemptions.

1. A municipality may grant a partial or complete exemption from ad valorem taxation on single-family residential property, exclusive of the land on which it is situated, ~~located in a zone project~~ if the property was purchased or rehabilitated by an individual for the individual's primary place of residence as a zone project. An exemption granted under this subsection may not extend beyond five taxable years following the date of acquisition or rehabilitation.
2. A municipality may grant a partial or complete exemption from ad valorem taxation on buildings, structures, fixtures, and improvements purchased ~~by a business or rehabilitated as a zone project~~ for any business or investment purpose, ~~excluding investment, as part of a zone project~~. An exemption granted under this subsection may not extend beyond five taxable years ~~beginning in the year of the investment~~ following the date of purchase or rehabilitation.
3. A municipality may grant a partial or complete exemption from ad valorem taxation on all buildings, structures, fixtures, and improvements ~~to residential or commercial property located in a zone project~~ if the property was purchased solely for investment purposes. An exemption granted under this subsection may not extend beyond five taxable years following the date of acquisition.

SECTION 6. AMENDMENT. Section 40-63-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-63-06. Historic preservation and renovation tax credit. A credit against state tax liability as determined under sections 57-35.3-03, 57-38-29, 57-38-30, and 57-38-30.3 is allowed for investments in the historic preservation or renovation of property within the renaissance zone ~~if the investment is made between January 1, 2000, and December 31, 2004~~. The amount of the credit is fifty twenty-five percent of the amount invested during the taxable year, up to a maximum of two hundred fifty thousand dollars. The credit may be claimed in the year in which the preservation or renovation is completed. Any excess credit may be carried forward for a period of up to five taxable years ~~from the date of the investment~~.

¹⁷⁷ **SECTION 7. AMENDMENT.** Section 40-63-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-63-07. Renaissance fund ~~corporation~~ organization - Exemption from taxation - Dissolution.

1. Each city with a designated renaissance zone may establish a renaissance fund ~~corporation~~ organization, if the ~~provisions detailed plan~~ provisions detailed plan for such a ~~corporation~~ organization is clearly established in the development plan and approved with the plan, or is submitted at a later date to the division of community services for approval after the designation of a renaissance zone. ~~The renaissance fund corporation may be a for-profit subsidiary of the local authority if one is designated.~~
2. The purpose of a renaissance fund ~~corporation~~ organization is solely to raise funds to be used to make investments in zone projects; ~~and to provide financing to enterprise zone projects in a manner that will encourage capital investment in downtowns and central portions of cities; encourage the establishment or expansion of commercial businesses in downtowns and central portions of cities; and encourage the purchase of homes and encourage residency in the downtowns and central portions of cities~~ and to make investments in businesses within a city's zone.
- ~~3.~~ A renaissance fund ~~corporation~~ organization may provide financing to ~~zone projects; including 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 ~~corporation~~ 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 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 exempt a renaissance fund ~~corporation~~ organization from complying with the income tax withholding laws.
5. 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 ~~corporation~~ organization. The

¹⁷⁷ Section 40-63-07 was also amended by section 1 of House Bill No. 1460, chapter 360.

amount of the credit is fifty percent of the amount invested in the renaissance fund corporation 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. The total amount of credits allowed under this section may not exceed, in the aggregate, two million five hundred thousand dollars for all taxpayers in all taxable years.
7. Income to a renaissance fund ~~corporation~~ organization derived from the sale or refinancing of zone properties financed wholly or in part by the ~~corporation~~ 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. Income to a renaissance fund ~~corporation~~ 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. If an investment in a renaissance fund ~~corporation~~ 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.
10. A renaissance fund ~~corporation~~ organization may invest in any ~~housing, residential or commercial, or infrastructure project~~ property involved in a zone project.
11. ~~Each petition for investment must include a plan for sale or refinancing that results in proceeds equal to or in excess of the proportional investment made by the renaissance fund corporation.~~

¹⁷⁸ **SECTION 8. AMENDMENT.** Section 40-63-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-63-09. Rules and administration - Income tax secrecy exception. The tax commissioner shall administer this chapter with respect to an income tax exemption or credit and has the same powers as provided under section 57-38-56 for purposes of this chapter. ~~The office of intergovernmental assistance, in cooperation with the tax commissioner, shall issue forms to a taxpayer who may be eligible for the income tax exemption or tax credit sufficient for the tax commissioner~~

¹⁷⁸ Section 40-63-09 was also amended by section 15 of House Bill No. 1049, chapter 55.

to monitor the use of any exemptions or credits received by a taxpayer. The secrecy provisions of section 57-38-57 do not apply to exemptions or credits received by taxpayers under sections 40-63-04, 40-63-06, and 40-63-07, but only when a local zone authority inquires of the tax commissioner about exemptions or credits claimed under sections 40-63-04, 40-63-06, and 40-63-07 with regard to that local zone authority or to the extent necessary for the tax commissioner to administer the tax exemptions or credits.

SECTION 9. AMENDMENT. Section 40-63-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-63-10. Pass-through of tax exemption or credit. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other pass-through entity that purchases or leases property in a renaissance zone for any business purpose, invests in a historic preservation or renovation of property within a renaissance zone, or invests in a renaissance fund ~~corporation~~ organization must be considered to be the taxpayer for purposes of any investment limitations in sections 40-63-04, 40-63-06, and 40-63-07, and the amount of the exemption or credit allowed with respect to the entity's investments must be determined at the pass-through entity level. The amount of the total exemption or credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the pass-through entity.

SECTION 10. A new section to chapter 40-63 of the North Dakota Century Code is created and enacted as follows:

Tax benefits not available to delinquent taxpayer. A taxpayer may not be delinquent in payment of any state and local tax liability to be eligible for a tax benefit under this chapter.

SECTION 11. REPEAL. Section 40-63-08 of the North Dakota Century Code is repealed.

SECTION 12. APPLICATION. Sections 4 and 5 of this Act apply to zone projects approved after December 31, 1999, and section 6 of this Act applies to zone projects approved after July 31, 2001.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 360

HOUSE BILL NO. 1460

(Representatives S. Kelsh, Drovdal, Ekstrom)
(Senators Christenson, Grindberg, T. Mathern)

RENAISSANCE CORPORATION TAX CREDIT LIMITATION

AN ACT to amend and reenact section 40-63-07 of the North Dakota Century Code, relating to the limitation on the total amount of tax credits for investments in renaissance fund corporations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁹ **SECTION 1. AMENDMENT.** Section 40-63-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-63-07. Renaissance fund corporation - Exemption from taxation.

1. Each city with a designated renaissance zone may establish a renaissance fund corporation, if the provisions for such a corporation are clearly established in the development plan and approved with the plan. The renaissance fund corporation may be a for-profit subsidiary of the local authority if one is designated.
2. The purpose of a renaissance fund corporation is solely to raise funds to be used to make investments in zone projects, and to provide financing to enterprise zone projects in a manner that will encourage capital investment in downtowns and central portions of cities, encourage the establishment or expansion of commercial businesses in downtowns and central portions of cities, and encourage the purchase of homes and encourage residency in the downtowns and central portions of cities.
3. A renaissance fund corporation may provide financing to zone projects, including 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.
4. A renaissance fund corporation is exempt from any tax imposed by chapter 57-35.3 or 57-38. A corporation or financial institution entitled to the exemption provided by this subsection must 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

¹⁷⁹ Section 40-63-07 was also amended by section 7 of Senate Bill No. 2033, chapter 359.

subsection does not exempt a renaissance fund corporation from complying with the income tax withholding laws.

5. 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 corporation. The amount of the credit is fifty percent of the amount invested in the renaissance fund corporation 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. 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 for all taxpayers in all taxable years. Upon exhaustion of this initial limit, an additional one million 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 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.
7. Income to a renaissance fund corporation derived from the sale or refinancing of zone properties financed wholly or in part by the corporation 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. Income to a renaissance fund corporation 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. If an investment in a renaissance fund corporation 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.
10. 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. 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 division of community services, and the tax commissioner. The 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 corporation may invest in any housing, commercial, or infrastructure project in a zone project.

~~44.~~ 12. Each petition for investment must include a plan for sale or refinancing that results in proceeds equal to or in excess of the proportional investment made by the renaissance fund corporation.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved April 26, 2001
Filed April 26, 2001

UNIFORM COMMERCIAL CODE

CHAPTER 361

HOUSE BILL NO. 1105

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

UNIFORM COMMERCIAL CODE - SECURED TRANSACTIONS

AN ACT to provide for a computerized central indexing system; to create and enact section 41-05-18 and a new chapter 41-09 of the North Dakota Century Code, relating to Uniform Commercial Code Article 9 - Secured Transactions; to amend and reenact subsection 5 of section 11-18-05, sections 32-20-08 and 35-06-11, subdivision a of subsection 1 of section 35-29-04, subsection 2 of section 35-32-02, section 35-34-06, subsection 2 of section 41-01-05, section 41-01-10.5, subsections 9 and 32 and subdivision a of subsection 37 of section 41-01-11, subsection 2 of section 41-01-16, subdivision d of subsection 3 of section 41-02-03, sections 41-02-17, 41-02-43, and 41-02-50, subsection 3 of section 41-02-95, subsection 3 of section 41-02.1-03, sections 41-02.1-33 and 41-02.1-37, subdivision b of subsection 1 of section 41-02.1-39, subdivision a of subsection 3 of section 41-04-22, subdivision a of subsection 1 of section 41-07-32, subsection 6 of section 41-08-03, section 41-08-06, subsection 5 of section 41-08-10, subdivision c of subsection 1 of section 41-08-27, subsection 1 of section 41-08-28, section 41-08-50, subsection 12 of section 47-19-02, subdivision a of subsection 2 of section 49-04-19, and section 54-09-08 of the North Dakota Century Code, relating to the Uniform Commercial Code; to repeal present chapter 41-09 of the North Dakota Century Code, relating to secured transactions; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁰ **SECTION 1. AMENDMENT.** Subsection 5 of section 11-18-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. For filing, indexing, making, or completing any statement, abstract, or certificate under the Uniform Commercial Code central filing data base, the computerized central notice system or the computerized statutory liens data base, for receiving printouts, and for other services provided through the computerized system, the fee is the same as that provided in sections ~~41-09-42~~ 41-09-96 and ~~41-09-43~~, as applicable 35 of this Act.

¹⁸⁰ Section 11-18-05 was also amended by section 2 of Senate Bill No. 2173, chapter 121.

SECTION 2. AMENDMENT. Section 32-20-08 of the North Dakota Century Code is amended and reenacted as follows:

32-20-08. Other remedies not affected. This chapter does not affect any right or remedy to foreclose or otherwise enforce or satisfy a lien upon or security interest in personal property without action as prescribed in sections ~~41-09-47~~ 41-09-98 through ~~41-09-53~~ 41-09-123.

SECTION 3. AMENDMENT. Section 35-06-11 of the North Dakota Century Code is amended and reenacted as follows:

35-06-11. Pledge enforced - Sale when performance due. When performance of the act for which a pledge is given is due in whole or in part, the pledgee may collect what is due ~~him~~ the pledgee by a sale of the property pledged, subject to the rules and exceptions prescribed in this chapter and in ~~section 41-09-50~~ sections 41-09-98 through 41-09-123.

SECTION 4. AMENDMENT. Subdivision a of subsection 1 of section 35-29-04 of the North Dakota Century Code is amended and reenacted as follows:

- a. The secretary of state, the secretary shall cause the notice to be marked, held, and indexed in accordance with the provisions of ~~subsection 4 of section 41-09-42~~ 41-09-90 as if the notice were a financing statement within the meaning of title 41; or

SECTION 5. AMENDMENT. Subsection 2 of section 35-32-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, if the holder of a lien under this chapter relinquishes possession of the aircraft before the amount due is paid, that person may retake possession of the aircraft as provided by section ~~41-09-49~~ 41-09-106.

SECTION 6. AMENDMENT. Section 35-34-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

35-34-06. Lien on other personal property.

1. In the case of personal property that does not consist of a vehicle, a vessel, or an account maintained in a financial institution, the public authority may establish a lien on such personal property by filing a notice of lien with the office of the register of deeds in the county in which the personal property may be found or with the secretary of state. The notice must particularly describe the property to be subjected to the lien and the name and ~~last known~~ last-known address of the obligor. The notice of lien must state that the child support obligation is past due and that a copy of the notice of lien has been served on the obligor by first-class mail at the obligor's ~~last known~~ last-known address.
2. The information filed with a register of deeds or with the secretary of state under this section must be included in the computerized central indexing system maintained by the secretary of state under section ~~41-09-46~~ 33 of this Act and must be accessible to the public on the same terms and conditions that apply to access other statutory lien information maintained in the computerized central indexing system.

3. Upon filing of the notice of lien in accordance with this section, the lien attaches to and is perfected against all personal property described in the notice.

SECTION 7. AMENDMENT. Subsection 2 of section 41-01-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:
 - a. Rights of creditors against sold goods. Section 41-02-47.
 - b. Applicability of the chapter on leases. Sections 41-02.1-05 and 41-02.1-06.
 - c. Applicability of the chapter on bank deposits and collections. Section 41-04-02.
 - d. Governing law in the chapter on funds transfers. Section 41-04.1-38.
 - e. Letters of credit. Section 41-05-16.
 - f. Applicability of the chapter on investment securities. Section 41-08-10.
 - g. ~~Perfection provisions of the chapter on secured transactions. Section 41-09-03~~ Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 41-09-21 through 41-09-27.

SECTION 8. AMENDMENT. Section 41-01-10.5 of the North Dakota Century Code is amended and reenacted as follows:

41-01-10.5. (~~41-106~~) Required refilings.

1. If a security interest, without filing or recording, is perfected or has priority on January 1, 1974, as to all persons or as to certain persons and the filing or recording of a financing statement would be required for the perfection or priority of the security interest against those persons, the perfection and priority rights of the security interest continue until three years after January 1, 1974, at which time the perfection will lapse unless a financing statement is filed or recorded as provided for in subsection 4 or the security interest is otherwise perfected.
2. If a security interest is perfected on January 1, 1974, under a law other than this title which requires no further filing, refiling, or recording in order to continue its perfection, perfection continues until three years after January 1, 1974, at which time the perfection will lapse, unless a financing statement is filed as provided for in subsection 4, the security interest is otherwise perfected, or under subsection ~~3~~ 1 of section ~~41-09-23~~ 41-09-31 the other law continues to govern filing.

3. If a security interest is perfected by a filing, refiling, or recording under any statute or other law repealed or modified by chapter 343 of the 1973 Session Laws, as codified in this title, which required further filing, refiling, or recording in order to continue its perfection, perfection continues and will lapse on the date provided for by the law so repealed for such further filing, refiling, or recording, unless a financing statement is filed as provided for in subsection 4 or the security interest is otherwise perfected.
4. A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. ~~The financing statement may be signed by either the debtor or the secured party.~~ It must identify the security agreement, statement, or notice (however denominated in any statute or other law repealed or modified by chapter 343 of the 1973 Session Laws, as codified in this title), state the office where and the date when the last filing, refiling, or recording, if any, was made with respect to it, and the filing number, if any, or book and page, if any, of any recording and further state that the security agreement, statement, or notice (however denominated) in another filing office under this title or under any statute or other law repealed or modified by chapter 343 of the 1973 Session Laws, as codified in this title, is still effective. Sections ~~41-09-40~~ 41-09-21 and ~~41-09-03~~ 41-09-72 govern the proper place to file the financing statement. Except as specified in this subsection, the provisions of ~~subsection 3~~ subsections 4 and 5 of section ~~41-09-42~~ 41-09-86 for continuation statements apply to the financing statement.

SECTION 9. AMENDMENT. Subsections 9 and 32 and subdivision a of subsection 37 of section 41-01-11 of the North Dakota Century Code are amended and reenacted as follows:

9. "Buyer in ordinary course of business" means a person ~~who~~ that buys goods in good faith ~~and~~, without knowledge that the sale ~~to the person is in violation of~~ violates the ownership rights or security interest of a third party another person in the goods buys, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind ~~but does not include a pawnbroker.~~ All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. "Buying" A buyer in the ordinary course of business may be buy for cash or, by exchange of other property, or on secured or unsecured credit, and includes receiving may acquire goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 41-02 may be a buyer in the ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in the ordinary course of business.

32. "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
37. a. "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. ~~The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 41-02-46) is limited in effect to a reservation of a "security interest".~~ The term also includes any interest of a consignor and a buyer of accounts or, chattel paper which, a payment intangible, or a promissory note in a transaction that is subject to chapter 41-09. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 41-02-46 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 41-09. ~~Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment is in any event subject to the provisions on consignment sales (section 41-02-43).~~ Except as otherwise provided in section 41-02-53, the right of a seller or lessor of goods under chapter 41-02 or 41-02.1 to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with chapter 41-09. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer, section 41-02-46, is limited in effect to a reservation of a "security interest". Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and (1) the original term of the lease is equal to or greater than the remaining economic life of the goods; (2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods; (3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or (4) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

SECTION 10. AMENDMENT. Subsection 2 of section 41-01-16 of the North Dakota Century Code is amended and reenacted as follows:

2. Subsection 1 does not apply to contracts for the sale of goods (section 41-02-08) nor of securities (section 41-08-13) nor to security agreements (section ~~41-09-16~~ 41-09-13).

SECTION 11. AMENDMENT. Subdivision d of subsection 3 of section 41-02-03 of the North Dakota Century Code is amended and reenacted as follows:

- d. "Consumer goods". Section ~~41-09-09~~ 41-09-02.

SECTION 12. AMENDMENT. Section 41-02-17 of the North Dakota Century Code is amended and reenacted as follows:

41-02-17. (2-210) Delegation of performance - Assignment of rights.

1. A party may perform that party's duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having the other party's original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.
2. ~~Unless~~ Except as otherwise provided in section 41-09-68, unless otherwise agreed, all rights of either seller or buyer can be assigned except when the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on the other party by that party's contract, or impair materially that party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of the assignor's entire obligation can be assigned despite agreement otherwise.
3. The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection 2 unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (a) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (b) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.
4. Unless the circumstances indicate the contrary, a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.
4. ~~5.~~ An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by the assignee to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.
- ~~5.~~ 6. The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to that party's rights against the assignor demand assurances from the assignee (section 41-02-72).

SECTION 13. AMENDMENT. Section 41-02-43 of the North Dakota Century Code is amended and reenacted as follows:

41-02-43. (2-326) Sale on approval and sale or return - Consignment sales and rights Rights of creditors.

1. Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:
 - a. A "sale on approval" if the goods are delivered primarily for use.
 - b. A "sale or return" if the goods are delivered primarily for resale.
2. ~~Except as provided in subsection 3, goods~~ Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.
3. ~~If goods are delivered to a person for sale and such person maintains a place of business at which such person deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery:~~
 - a. ~~Complied with an applicable law providing for a consignor's interest or the like to be evidenced by a sign;~~
 - b. ~~Establishes that the person conducting the business is generally known by the person's creditors to be substantially engaged in selling the goods of others; or~~
 - e. ~~Complies with the filing provisions of the chapter on secured transactions (chapter 41-09).~~
4. Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (section 41-02-08) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (section 41-02-09).

SECTION 14. AMENDMENT. Section 41-02-50 of the North Dakota Century Code is amended and reenacted as follows:

41-02-50. (2-502) Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.

1. Subject to ~~subsection~~ subsections 2 and 3 and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which the buyer has a special property under the provisions of section 41-02-49 may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

- a. In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or
- b. In all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.
2. The buyer's right to recover the goods under subdivision a of subsection 1 vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.
3. If the identification creating the buyer's special property has been made by the buyer, the buyer acquires the right to recover the goods only if they conform to the contract for sale.

SECTION 15. AMENDMENT. Subsection 3 of section 41-02-95 of the North Dakota Century Code is amended and reenacted as follows:

3. The buyer has a right of replevin for goods identified to the contract if after reasonable effort the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

SECTION 16. AMENDMENT. Subsection 3 of section 41-02.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. The following definitions also apply to this chapter:
 - a. "Account". Section ~~41-09-06~~ 41-09-02.
 - b. "Between merchants". Subsection 1 of section 41-02-04.
 - c. "Buyer". Subdivision a of subsection 1 of section 41-02-03.
 - d. "Chattel paper". ~~Subdivision e of subsection 4 of section 41-09-05~~ Section 41-09-02.
 - e. "Consumer goods". ~~Subsection 4 of section 41-09-09~~ Section 41-09-02.
 - f. "Document". ~~Subdivision g of subsection 4 of section 41-09-05~~ Section 41-09-02.
 - g. "Entrusting". Subsection 3 of section 41-02-48.
 - h. "General ~~intangibles~~ intangible". Section ~~41-09-06~~ 41-09-02.
 - i. "Good faith". Subdivision b of subsection 1 of section 41-02-03.
 - j. "Instrument". ~~Subdivision j of subsection 4 of section 41-09-05~~ Section 41-09-02.

- k. "Merchant". Subsection 3 of section 41-02-04.
- l. "Mortgage". ~~Subdivision k of subsection 4 of section 41-09-05~~
Section 41-09-02.
- m. "Pursuant to commitment". ~~Subdivision l of subsection 4 of section 41-09-05~~
Section 41-09-02.
- n. "Receipt". Subdivision c of subsection 1 of section 41-02-03.
- o. "Sale". Subdivision d of subsection 1 of section 41-02-06.
- p. "Sale on approval". Subdivision a of subsection 1 of section 41-02-43.
- q. "Sale or return". Subdivision b of subsection 1 of section 41-02-43.
- r. "Seller". Subdivision d of subsection 1 of section 41-02-03.

SECTION 17. AMENDMENT. Section 41-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

41-02.1-33. (2A-303) Alienability of party's interest under lease contract or of lessor's residual interest in goods - Delegation of performance - Transfer of rights.

1. Except as provided in ~~subsections 2 and~~ subsection 3 and section 41-09-69, a provision in a lease agreement that prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or that makes such a transfer an event of default, is enforceable as provided in subsection 4 ~~3~~, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective. "Creation of a security interest" as used in this section includes the sale of a lease contract that is subject to chapter 41-09.
2. ~~A provision in a lease agreement that prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract, or in the lessor's residual interest in the goods or that makes such a transfer an event of default is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or delegation of a material performance of either party to the lease contract in violation of the provision.~~
- ~~3.~~ A transfer of a right to damages for default with respect to the whole lease contract or a transfer of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, which includes the creation of a security interest in the right to future payment under a lease contract that is granted by a lessor who has no remaining performance under the lease contract, may not be prohibited or made an event of default and is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the

duty of, or materially increases the burden or risk imposed on the other party to the lease contract within subsection 4 ~~3~~.

4. ~~3~~. Subject to ~~subsections subsection~~ subsection 2 and 3 ~~section 41-09-69~~, if a transfer is made that is prohibited or is an event of default under a lease agreement, or if a transfer is made that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract, unless the party prejudiced by the transfer agrees at any time to the transfer in the lease contract or otherwise, then that party has, if the transfer is made an event of default, the rights and remedies provided under subsection 2 of section 41-02.1-48. In all other cases, except as limited by contract, the transferor is liable to the prejudiced party for damages caused by the transfer to the extent the damages could not reasonably be prevented by the prejudiced party. A court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.
- ~~5~~. 4. A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar general terms is a transfer of rights, and unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee and acceptance by the transferee constitutes a promise by the transferee to perform those duties. This promise is enforceable by either the transferor or the other party to the lease contract.
- ~~6~~. 5. Unless otherwise agreed by the lessor and the lessee, no delegation of performance relieves the transferor as against the other party of any duty to perform or any liability for default.
- ~~7~~. 6. To prohibit the transfer of an interest of a party under a consumer lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

SECTION 18. AMENDMENT. Section 41-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

41-02.1-37. (2A-307) Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.

1. Except as otherwise provided in section 41-02.1-36, a creditor of a lessee takes subject to the lease contract.
2. Except as otherwise provided in ~~subsections subsection~~ subsection 3 and 4 and in sections 41-02.1-36 and 41-02.1-38, a creditor of a lessor takes subject to the lease contract unless ~~any of the following is met:~~
 - ~~a. The~~ the creditor holds a lien that attached to the goods before the lease contract became enforceable.
 - ~~b. The creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest.~~
 - ~~c. The creditor holds a security interest in the goods was perfected (section 41-09-24) before the lease contract became enforceable.~~

3. A lessee in the ordinary course of business takes the leasehold free of a security interest is perfected and the lessee knows of its existence.
4. A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five day period. Except as otherwise provided in sections 41-09-37, 41-09-41, and 41-09-43, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

SECTION 19. AMENDMENT. Subdivision b of subsection 1 of section 41-02.1-39 of the North Dakota Century Code is amended and reenacted as follows:

- b. A "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of ~~subsection 5~~ subsections 1 and 2 of section 41-09-41 41-09-73.

SECTION 20. AMENDMENT. Subdivision a of subsection 3 of section 41-04-22 of the North Dakota Century Code is amended and reenacted as follows:

- a. No security agreement is necessary to make the security interest enforceable (paragraph 1 of subdivision a c of subsection 4 2 of section 41-09-16 41-09-13).

SECTION 21. Section 41-05-18 of the North Dakota Century Code is created and enacted as follows:

41-05-18. (5-118) Security interest of issuer or nominated person.

1. An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.
2. So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection 1, the security interest continues and is subject to chapter 41-09, but:
 - a. A security agreement is not necessary to make the security interest enforceable under subdivision c of subsection 2 of section 41-09-13;
 - b. If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and
 - c. If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

SECTION 22. AMENDMENT. Subdivision a of subsection 1 of section 41-07-32 of the North Dakota Century Code is amended and reenacted as follows:

- a. Delivered or entrusted them or any document of title covering them to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell or with power to obtain delivery under this chapter (section 41-07-28) or with power of disposition under this title (sections 41-02-48 and ~~41-09-28~~ 41-09-40) or other statute or rule of law; nor

SECTION 23. AMENDMENT. Subsection 6 of section 41-08-03 of the North Dakota Century Code is amended and reenacted as follows:

6. A commodity contract, as defined in section ~~41-09-13.2~~ 41-09-02, is not a security or a financial asset.

SECTION 24. AMENDMENT. Section 41-08-06 of the North Dakota Century Code is amended and reenacted as follows:

41-08-06. (8-106) Control.

1. A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.
2. A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:
 - a. The certificate is endorsed to the purchaser or in blank by an effective endorsement; or
 - b. The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.
3. A purchaser has "control" of an uncertificated security if:
 - a. The uncertificated security is delivered to the purchaser; or
 - b. The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.
4. A purchaser has "control" of a security entitlement if:
 - a. The purchaser becomes the entitlement holder; ~~or~~
 - b. The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or
 - c. Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

5. If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.
6. A purchaser who has satisfied the requirements of ~~subdivision b of~~ subsection 3 or ~~subdivision b of~~ subsection 4 has control, even if the registered owner in the case of ~~subdivision b of~~ subsection 3 or the entitlement holder in the case of ~~subdivision b of~~ subsection 4 retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.
7. An issuer or a securities intermediary may not enter into an agreement of the kind described in subdivision b of subsection 3 or subdivision b of subsection 4 without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

SECTION 25. AMENDMENT. Subsection 5 of section 41-08-10 of the North Dakota Century Code is amended and reenacted as follows:

5. The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:
 - a. If an agreement between the securities intermediary and its entitlement holder ~~specifies that it is governed by the law of a particular jurisdiction governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this chapter, or this title, that jurisdiction is the securities intermediary's jurisdiction.~~
 - b. If subdivision a does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
 - c. If neither subdivision a nor b applies and an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in subdivision a, but governing the securities account expressly specifies provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.
 - e. d. If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision a or b none of the preceding subdivisions applies, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account is located.

- d. ~~e.~~ If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision a or b and an account statement does not identify an office serving the entitlement holder's account as provided in subdivision e none of the preceding subdivisions applies, the securities intermediary's jurisdiction is the jurisdiction in which is ~~located~~ the chief executive office of the securities intermediary is located.

SECTION 26. AMENDMENT. Subdivision c of subsection 1 of section 41-08-27 of the North Dakota Century Code is amended and reenacted as follows:

- c. A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and ~~has been~~ is (1) registered in the name of the purchaser, (2) payable to the order of the purchaser, or (3) specially endorsed indorsed to the purchaser by an effective endorsement indorsement and has not been indorsed to the securities intermediary or in blank.

SECTION 27. AMENDMENT. Subsection 1 of section 41-08-28 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsections 2 and 3, ~~upon delivery a purchaser of a certificated or uncertificated security to a purchaser, the purchaser~~ acquires all rights in the security that the transferor had or had power to transfer.

SECTION 28. AMENDMENT. Section 41-08-50 of the North Dakota Century Code is amended and reenacted as follows:

41-08-50. (8-510) Rights of purchaser of security entitlement from entitlement holder.

1. ~~An~~ In a case not covered by the priority rules in chapter 41-09 or the rules stated in subsection 3, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.
2. If an adverse claim could not have been asserted against an entitlement holder under section 41-08-42, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.
3. In a case not covered by the priority rules in chapter 41-09, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. ~~Purchasers~~ Except as otherwise provided in subsection 4, purchasers who have control rank equally, except that a according to priority in time of:
- a. The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained,

if the purchaser obtained control under subdivision a of subsection 4 of section 41-08-06;

b. The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under subdivision b of subsection 4 of section 41-08-06; or

c. If the purchaser obtained control through another person under subdivision c of subsection 4 of section 41-08-06, the time on which priority would be based under this subsection if the other person were the secured party.

4. A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary.

SECTION 29. Chapter 41-09 of the North Dakota Century Code is created and enacted as follows:

41-09-01. (9-101) Short title. This chapter may be cited as Uniform Commercial Code - Secured Transactions.

41-09-02. (9-102) Definitions and index of definitions.

1. In this chapter:

a. "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

b. "Account", except as used in "account for", means:

(1) A right to payment of a monetary obligation, regardless of whether earned by performance:

(a) For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(b) For services rendered or to be rendered;

(c) For a policy of insurance issued or to be issued;

(d) For a secondary obligation incurred or to be incurred;

(e) For energy provided or to be provided;

(f) For the use or hire of a vessel under a charter or other contract;

(g) Arising out of the use of a credit or charge card or information contained on or for use with the card; or

(h) As winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit

of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.

(2) The term includes a health care insurance receivable. The term does not include:

(a) Right to payment evidenced by chattel paper or an instrument;

(b) Commercial tort claim;

(c) Deposit account;

(d) Investment property;

(e) Letter-of-credit right or letters of credit;

(f) Right to payment for any money or fund advanced or sold, other than a right arising out of the use of a credit or charge card or information contained on or for use with the card; or

(g) Certificate of deposit.

c. "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

d. "Accounting", except as used in "accounting for", means a record:

(1) Authenticated by a secured party;

(2) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(3) Identifying the components of the obligations in reasonable detail.

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:

- m. "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (1) charters or other contracts involving the use or hire of a vessel or (2) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.
- n. "Collateral" means the property subject to a security interest or agricultural lien. The term includes:
- (1) Proceeds to which a security interest attaches;
 - (2) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
 - (3) Goods that are the subject of a consignment.
- o. "Commercial tort claim" means a claim arising in tort with respect to which:
- (1) The claimant is an organization; or
 - (2) The claimant is an individual and the claim:
 - (a) Arose in the course of the claimant's business or profession; and
 - (b) Does not include damages arising out of personal injury to or the death of an individual.
- p. "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.
- q. "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:
- (1) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
 - (2) Traded on a foreign commodity board of trade, exchange, or market and is carried on the books of a commodity intermediary for a commodity customer.

- r. "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on the intermediary's books.
- s. "Commodity intermediary" means a person that:
- (1) Is registered as a futures commission merchant under federal commodities law; or
 - (2) In the ordinary course of the person's business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.
- t. "Communicate" means:
- (1) To send a written or other tangible record;
 - (2) To transmit a record by any means agreed upon by the persons sending and receiving the record; or
 - (3) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.
- u. "Consignee" means a merchant to which goods are delivered in a consignment.
- v. "Consignment" means a transaction, regardless of form, in which a person delivers goods to a merchant for the purpose of sale and:
- (1) The merchant:
 - (a) Deals in goods of that kind under a name other than the name of the person making delivery;
 - (b) Is not an auctioneer; and
 - (c) Is not generally known by its creditors to be substantially engaged in selling the goods of others;
 - (2) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;
 - (3) The goods are not consumer goods immediately before delivery; and
 - (4) The transaction does not create a security interest that secures an obligation.
- w. "Consignor" means a person that delivers goods to a consignee in a consignment.
- x. "Consumer debtor" means a debtor in a consumer transaction.

- y. "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.
- z. "Consumer-goods transaction" means a consumer transaction in which:
- (1) An individual incurs an obligation primarily for personal, family, or household purposes; and
 - (2) A security interest in consumer goods secures the obligation.
- aa. "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.
- bb. "Consumer transaction" means a transaction in which:
- (1) An individual incurs an obligation primarily for personal, family, or household purposes;
 - (2) A security interest secures the obligation; and
 - (3) The collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.
- cc. "Continuation statement" means an amendment of a financing statement which:
- (1) Identifies, by its file number, the initial financing statement to which it relates; and
 - (2) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.
- dd. "Debtor" means:
- (1) A person having an interest, other than a security interest or other lien, in the collateral, regardless of whether the person is an obligor;
 - (2) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or
 - (3) A consignee.
- ee. "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or an account evidenced by a certificate of deposit or an instrument.
- ff. "Document" means a document of title or a receipt of the type described in subsection 2 of section 41-07-07.

- gg. "Electronic chattel paper" means chattel paper evidenced by a record consisting of information stored in an electronic medium.
- hh. "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.
- ii. "Equipment" means goods other than inventory, farm products, or consumer goods.
- jj. "Farm products" means goods, other than standing timber, subject to a lien created under chapter 35-17, 35-30, or 35-31, or with respect to which the debtor is engaged in a farming operation and which are:
- (1) Crops grown, growing, or to be grown, including:
- (a) Crops produced on trees, vines, and bushes; and
- (b) Aquatic goods produced in aquacultural operations;
- (2) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;
- (3) Supplies used or produced in a farming operation; or
- (4) Products of crops or livestock in their unmanufactured states.
- kk. "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.
- ll. "File number" means the number assigned to an initial financing statement pursuant to subsection 1 of section 41-09-90.
- mm. "Filing office" means an office designated in section 41-09-72 as the place to file a financing statement.
- nn. "Filing-office rule" means a rule adopted under section 41-09-97.
- oo. "Financing statement" means a record composed of an initial financing statement and any filed record relating to the initial financing statement.
- pp. "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subsections 1 and 2 of section 41-09-73. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.
- qq. "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.
- rr. "General intangible" means any personal property, including things in action, other than accounts, certificates of deposit, chattel paper,

commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

ss. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

tt. "Goods" means all things that are movable when a security interest attaches.

(1) The term includes:

(a) Fixtures;

(b) Standing timber that is to be cut and removed under a conveyance or contract for sale;

(c) The unborn young of animals;

(d) Crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and

(e) Manufactured homes.

(2) The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:

(a) The program is associated with the goods in such a manner that the program is customarily considered part of the goods; or

(b) By becoming the owner of the goods, a person acquires a right to use the program in connection with the goods.

(3) The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, certificates of deposit, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

uu. "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

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.

- ww. "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:
- (1) Certificates of deposit;
 - (2) Investment property;
 - (3) Letters of credit; or
 - (4) Writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.
- xx. "Inventory" means goods, other than farm products, that:
- (1) Are leased by a person as lessor;
 - (2) Are held by a person for sale or lease or to be furnished under a contract of service;
 - (3) Are furnished by a person under a contract of service; or
 - (4) Consist of raw materials, work in process, or materials used or consumed in a business.
- yy. "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.
- zz. "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.
- aaa. "Letter-of-credit right" means a right to payment or performance under a letter of credit, regardless of whether the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.
- bbb. "Lien creditor" means:
- (1) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;
 - (2) An assignee for benefit of creditors from the time of assignment;
 - (3) A trustee in bankruptcy from the date of the filing of the petition; or
 - (4) A receiver in equity from the time of appointment.

- ccc. "Manufactured home" means a structure, transportable in one or more sections, that, in the traveling mode, is eight body feet [2.44 meters] or more in width or forty body feet [12.19 meters] or more in length, or, when erected on site, is three hundred twenty square feet [29.73 square meters] or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under title 42 of the United States Code.
- ddd. "Manufactured-home transaction" means a secured transaction:
- (1) Which creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
 - (2) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.
- eee. "Mortgage" means a consensual interest in real property, including fixtures, that secures payment or performance of an obligation.
- fff. "New debtor" means a person that becomes bound as debtor under subsection 4 of section 41-09-13 by a security agreement previously entered into by another person.
- ggg. "New value" means:
- (1) Money;
 - (2) Money's worth in property, services, or new credit; or
 - (3) Release by a transferee of an interest in property previously transferred to the transferee.
- The term does not include an obligation substituted for another obligation.
- hhh. "Noncash proceeds" means proceeds other than cash proceeds.
- iii. "Nonnegotiable certificate of deposit" means a bank record that contains an acknowledgment that a sum of money has been received by the issuer and a promise by the issuer to repay the sum of money other than a deposit account or negotiable instrument.
- iii. "Nontransferable certificate of deposit" means a nonnegotiable certificate of deposit which may be transferred only on the books of the issuer, with the consent of the issuer, or subject to other

restrictions or considerations of the issuer on transfer. The term does not include a deposit account.

kkk. "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

- (1) Owes payment or other performance of the obligation;
- (2) Has provided property other than the collateral to secure payment or other performance of the obligation; or
- (3) Is otherwise accountable in whole or in part for payment or other performance of the obligation.

The term does not include issuers or nominated persons under a letter of credit.

lll. "Original debtor", except as used in subsection 3 of section 41-09-30, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subsection 4 of section 41-09-13.

mmm. "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

nnn. "Person related to", with respect to an individual, means:

- (1) The spouse of the individual;
- (2) A brother, brother-in-law, sister, or sister-in-law of the individual;
- (3) An ancestor or lineal descendant of the individual or the individual's spouse; or
- (4) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

ooo. "Person related to", with respect to an organization, means:

- (1) A person directly or indirectly controlling, controlled by, or under common control with the organization;
- (2) An officer or director of, or a person performing similar functions with respect to, the organization;
- (3) An officer or director of, or a person performing similar functions with respect to, a person described in paragraph 1;
- (4) The spouse of an individual described in paragraph 1, 2, or 3; or

- (5) An individual who is related by blood or marriage to an individual described in paragraph 1, 2, 3, or 4 and shares the same home with the individual.
- ppp. "Proceeds", except as used in subsection 2 of section 41-09-106, means the following property:
- (1) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (2) Whatever is collected on, or distributed on account of, collateral;
- (3) Rights arising out of collateral;
- (4) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (5) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.
- qqq. "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.
- rrr. "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures under sections 41-09-115 through 41-09-117.
- sss. "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, regardless of whether a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from the secured party's obligation.
- ttt. "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.
- uuu. "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.
- vvv. "Secondary obligor" means an obligor to the extent that:
- (1) The obligor's obligation is secondary; or

- (2) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

www. "Secured party" means:

- (1) A person in whose favor a security interest is created or provided for under a security agreement, regardless of whether any obligation to be secured is outstanding;
- (2) A person that holds an agricultural lien;
- (3) A consignor;
- (4) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
- (5) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
- (6) A person that holds a security interest arising under section 41-02-46, section 41-02-53, subsection 3 of section 41-02-90, subsection 5 of section 41-02.1-56, section 41-04-22, or section 41-05-18.

xxx. "Security agreement" means an agreement that creates or provides for a security interest.

yyy. "Send", in connection with a record or notification, means:

- (1) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
- (2) To cause the record or notification to be received within the time that it would have been received if properly sent under paragraph 1.

zzz. "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

aaaa. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

bbbb. "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

- cccc. "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.
- dddd. "Termination statement" means an amendment of a financing statement which:
- (1) Identifies, by the amendment's file number, the initial financing statement to which it relates; and
 - (2) Indicates either that the amendment is a termination statement or that the identified financing statement is no longer effective.
- eeee. "Transmitting utility" means a person primarily engaged in the business of:
- (1) Operating a railroad, subway, street railway, or trolley bus;
 - (2) Transmitting communications electrically, electromagnetically, or by light;
 - (3) Transmitting goods by pipeline or sewer; or
 - (4) Transmitting or producing and transmitting electricity, steam, gas, or water.
- ffff. "Uncertificated certificate of deposit" means an obligation of a bank to repay a sum of money that it has received which is not represented by a certificate, but only by an entry on the books of the bank and any documentation given to the customer by the bank. The term does not include a deposit account.
2. The following definitions in other chapters apply to this chapter:
- a. "Applicant". Section 41-05-02.
 - b. "Beneficiary". Section 41-05-02.
 - c. "Broker". Section 41-08-02.
 - d. "Certificated security". Section 41-08-02.
 - e. "Check". Section 41-03-04.
 - f. "Clearing corporation". Section 41-08-02.
 - g. "Contract for sale". Section 41-02-06.
 - h. "Customer". Section 41-04-04.
 - i. "Entitlement holder". Section 41-08-02.
 - j. "Financial asset". Section 41-08-02.
 - k. "Holder in due course". Section 41-03-28.

- l. "Issuer" (with respect to a letter of credit or letter-of-credit right). Section 41-05-02.
 - m. "Issuer" (with respect to a security). Section 41-08-17.
 - n. "Lease". Section 41-02.1-03.
 - o. "Lease agreement". Section 41-02.1-03.
 - p. "Lease contract". Section 41-02.1-03.
 - q. "Leasehold interest". Section 41-02.1-03.
 - r. "Lessee". Section 41-02.1-03.
 - s. "Lessee in ordinary course of business". Section 41-02.1-03.
 - t. "Lessor". Section 41-02.1-03.
 - u. "Lessor's residual interest". Section 41-02.1-03.
 - v. "Letter of credit". Section 41-05-02.
 - w. "Merchant". Section 41-02-04.
 - x. "Negotiable instrument". Section 41-03-04.
 - y. "Nominated person". Section 41-05-02.
 - z. "Note". Section 41-03-04.
 - aa. "Proceeds of a letter of credit". Section 41-05-14.
 - bb. "Prove". Section 41-03-03.
 - cc. "Sale". Section 41-02-06.
 - dd. "Securities account". Section 41-08-41.
 - ee. "Securities intermediary". Section 41-08-02.
 - ff. "Security". Section 41-08-02.
 - gg. "Security certificate". Section 41-08-02.
 - hh. "Security entitlement". Section 41-08-02.
 - ii. "Uncertificated security". Section 41-08-02.
3. Chapter 41-01 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

41-09-03. (9-103) Purchase-money security interest - Application of payments - Burden of establishing.

1. In this section:

- a. "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and
 - b. "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.
 2. A security interest in goods is a purchase-money security interest:
 - a. To the extent that the goods are purchase-money collateral with respect to that security interest;
 - b. If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and
 - c. Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.
 3. A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:
 - a. The debtor acquired its interest in the software in an integrated transaction in which the debtor acquired an interest in the goods; and
 - b. The debtor acquired its interest in the software for the principal purpose of using the software in the goods.
 4. The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.
 5. If the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:
 - a. In accordance with any reasonable method of application to which the parties agree;
 - b. In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or
 - c. In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:
 - (1) To obligations that are not secured; and

- (2) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.
6. A purchase-money security interest does not lose its status as such, even if:
- a. The purchase-money collateral also secures an obligation that is not a purchase-money obligation;
 - b. Collateral that is not purchase-money collateral also secures the purchase-money obligation; or
 - c. The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.
7. A secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

41-09-04. (9-104) Control of deposit account or uncertificated certificate of deposit.

1. A secured party has control of a deposit account or uncertificated certificate of deposit if:
- a. The secured party is the bank with which the deposit account or uncertificated certificate of deposit is maintained;
 - b. The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account or uncertificated certificate of deposit without further consent by the debtor; or
 - c. The secured party becomes the bank's customer with respect to the deposit account or uncertificated certificate of deposit.
2. A secured party that has satisfied subsection 1 has control, even if the debtor retains the right to direct the disposition of funds from the deposit account or uncertificated certificate of deposit.

41-09-05. (9-105) Control of electronic chattel paper. A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

- 1. A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subsections 4 through 6, unalterable;
- 2. The authoritative copy identifies the secured party as the assignee of the record or records;
- 3. The authoritative copy is communicated to and maintained by the secured party or the secured party's designated custodian;

4. Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
5. Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
6. Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

41-09-06. (9-106) Control of investment property.

1. A person has control of a certificated security, uncertificated security, or security entitlement as provided in section 41-08-06.
2. A secured party has control of a commodity contract if:
 - a. The secured party is the commodity intermediary with which the commodity contract is carried; or
 - b. The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.
3. A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

41-09-07. (9-107) Control of letter-of-credit right. A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under subsection 3 of section 41-05-14 or otherwise applicable law or practice.

41-09-08. (9-108) Sufficiency of description.

1. Except as otherwise provided in subsections 3 through 5, a description of personal or real property is sufficient, regardless of whether the description is specific, if the description reasonably identifies what is described.
2. Except as otherwise provided in subsection 4, a description of collateral reasonably identifies the collateral if it identifies the collateral by:
 - a. Specific listing;
 - b. Category;
 - c. Except as otherwise provided in subsection 5, a type of collateral defined in the Uniform Commercial Code;
 - d. Quantity;
 - e. Computational or allocational formula or procedure; or

- f. Except as otherwise provided in subsection 3, any other method, if the identity of the collateral is objectively determinable.
- 3. A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.
- 4. Except as otherwise provided in subsection 5, a description of a security entitlement, securities account, or commodity account is sufficient if the description describes:
 - a. The collateral by those terms or as investment property; or
 - b. The underlying financial asset or commodity contract.
- 5. A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:
 - a. A commercial tort claim; or
 - b. A security entitlement, a securities account, or a commodity account.

41-09-09. (9-109) Scope.

- 1. Except as otherwise provided in subsections 3 and 4, this chapter applies to:
 - a. A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
 - b. An agricultural lien;
 - c. A sale of accounts, chattel paper, payment intangibles, or promissory notes;
 - d. A consignment;
 - e. A security interest arising under section 41-02-46, section 41-02-53, subsection 3 of section 41-02-90, or subsection 5 of section 41-02.1-56, as provided in section 41-09-10; and
 - f. A security interest arising under section 41-04-22 or 41-05-18.
- 2. 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.
- 3. This chapter does not apply to the extent that:
 - a. A statute, regulation, or treaty of the United States preempts this chapter;
 - b. A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation,

perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

- c. The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 41-05-14.

4. This chapter does not apply to:

- a. A landlord's lien, other than an agricultural lien;
- b. A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 41-09-53 applies with respect to priority of the lien;
- c. An assignment of a claim for wages, salary, or other compensation of an employee;
- d. A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- e. An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- f. An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- g. An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- h. A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health care insurance receivable and any subsequent assignment of the right to payment, but sections 41-09-35 and 41-09-42 apply with respect to proceeds and priorities in proceeds;
- i. An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- j. A right of recoupment or set-off, but:
- (1) Section 41-09-60 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts or certificates of deposit; and
- (2) Section 41-09-66 applies with respect to defenses or claims of an account debtor;
- k. The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
- (1) Liens on real property in sections 41-09-13 and 41-09-28;

- (2) Fixtures in section 41-09-54;
 - (3) Fixture filings in sections 41-09-72, 41-09-73, 41-09-87, and 41-09-90; and
 - (4) Security agreements covering personal and real property in section 41-09-101;
- l. An assignment of a claim arising in tort, other than a commercial tort claim, but sections 41-09-35 and 41-09-42 apply with respect to proceeds and priorities in proceeds; or
 - m. A transfer by this state or a governmental unit of this state.

41-09-10. (9-110) Security interests arising under chapter 41-02 or 41-02.1. A security interest arising under section 41-02-46, section 41-02-53, subsection 3 of section 41-02-90, or subsection 5 of section 41-02.1-56 is subject to this chapter. However, until the debtor obtains possession of the goods:

- 1. The security interest is enforceable, even if subdivision c of subsection 2 of section 41-09-13 has not been satisfied;
- 2. Filing is not required to perfect the security interest;
- 3. The rights of the secured party after default by the debtor are governed by chapter 41-02 or 41-02.1; and
- 4. The security interest has priority over a conflicting security interest created by the debtor.

41-09-11. (9-201) General effectiveness of security agreement.

- 1. Except as otherwise provided in this title, a security agreement is effective according to the security agreement's terms between the parties, against purchasers of the collateral, and against creditors.
- 2. A transaction, although subject to this chapter, is also subject to 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.
- 3. In case of conflict between this chapter and a rule of law, statute, or regulation described in subsection 2, the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection 2 has only the effect the statute or regulation specifies. In no event is the failure of a secured party to comply with a statute or rule other than chapter 41-09 a failure to comply with any provision of chapter 41-09.
- 4. This chapter does not:
 - a. Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection 2; or

- b. Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

41-09-12. (9-202) Title to collateral immaterial. Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this chapter with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

41-09-13. (9-203) Attachment and enforceability of security interest - Proceeds - Supporting obligations - Formal requisites.

1. A security interest attaches to collateral when the security interest becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.
2. Except as otherwise provided in subsections 3 through 9, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:
 - a. Value has been given;
 - b. The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
 - c. One of the following conditions is met:
 - (1) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
 - (2) The collateral is not a certificated security and is in the possession of the secured party under section 41-09-33 pursuant to the debtor's security agreement;
 - (3) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 41-08-27 pursuant to the debtor's security agreement; or
 - (4) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or uncertificated certificates of deposit, and the secured party has control under section 41-09-04, 41-09-05, 41-09-06, or 41-09-07 pursuant to the debtor's security agreement.
3. Subsection 2 is subject to section 41-04-22 on the security interest of a collecting bank, section 41-05-18 on the security interest of a letter-of-credit issuer or nominated person, section 41-09-10 on a security interest arising under chapter 41-02 or 41-02.1, and section 41-09-16 on security interests in investment property.
4. A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract:

- a. The security agreement becomes effective to create a security interest in the person's property; or
 - b. The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.
5. If a new debtor becomes bound as debtor by a security agreement entered into by another person:
 - a. The agreement satisfies subdivision c of subsection 2 with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
 - b. Another agreement is not necessary to make a security interest in the property enforceable.
6. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 41-09-35 and is also attachment of a security interest in a supporting obligation for the collateral.
7. 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.
8. The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.
9. The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

41-09-14. (9-204) After-acquired property - Future advances.

1. Except as otherwise provided in subsection 2, a security agreement may create or provide for a security interest in after-acquired collateral.
2. A security interest does not attach under a term constituting an after-acquired property clause to:
 - a. Consumer goods, other than an accession if given as additional security, unless the debtor acquires rights in the consumer goods within ten days after the secured party gives value; or
 - b. A commercial tort claim.
3. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, regardless of whether the advances or value is given pursuant to commitment.

41-09-15. (9-205) Use or disposition of collateral permissible.

1. A security interest is not invalid or fraudulent against creditors solely because:
 - a. The debtor has the right or ability to:
 - (1) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;
 - (2) Collect, compromise, enforce, or otherwise deal with collateral;
 - (3) Accept the return of collateral or make repossessions; or
 - (4) Use, commingle, or dispose of proceeds; or
 - b. The secured party fails to require the debtor to account for proceeds or replace collateral.
2. This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

41-09-16. (9-206) Security interest arising in purchase or delivery of financial asset.

1. A security interest in favor of a securities intermediary attaches to a person's security entitlement if:
 - a. The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and
 - b. The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.
2. The security interest described in subsection 1 secures the person's obligation to pay for the financial asset.
3. A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:
 - a. The security or other financial asset:
 - (1) In the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and
 - (2) Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and
 - b. The agreement calls for delivery against payment.

4. The security interest described in subsection 3 secures the obligation to make payment for the delivery.

41-09-17. (9-207) Rights and duties of secured party having possession or control of collateral.

1. Except as otherwise provided in subsection 4, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.
2. Except as otherwise provided in subsection 4, if a secured party has possession of collateral:
 - a. Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;
 - b. The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;
 - c. The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
 - d. The secured party may use or operate the collateral:
 - (1) For the purpose of preserving the collateral or the collateral's value;
 - (2) As permitted by an order of a court having competent jurisdiction; or
 - (3) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.
3. Except as otherwise provided in subsection 4, a secured party having possession of collateral or control of collateral under section 41-09-04, 41-09-05, 41-09-06, or 41-09-07:
 - a. May hold as additional security any proceeds, except money or funds, received from the collateral;
 - b. Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
 - c. May create a security interest in the collateral.
4. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:
 - a. Subsection 1 does not apply unless the secured party is entitled under an agreement:
 - (1) To charge back uncollected collateral; or

- (2) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

b. Subsections 2 and 3 do not apply.

41-09-18. (9-208) Additional duties of secured party having control of collateral.

1. This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.
2. Within ten days after receiving an authenticated demand by the debtor:
 - a. A secured party having control of a deposit account or an uncertificated certificate of deposit under subdivision b of subsection 1 of section 41-09-04 shall send to the bank with which the deposit account or uncertificated certificate of deposit is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;
 - b. A secured party having control of a deposit account or an uncertificated certificate of deposit under subdivision c of subsection 1 of section 41-09-04 shall:
 - (1) Pay the debtor the balance on deposit in the deposit account or uncertificated certificate of deposit; or
 - (2) Transfer the balance on deposit into a deposit account or an uncertificated certificate of deposit in the debtor's name;
 - c. A secured party, other than a buyer, having control of electronic chattel paper under section 41-09-05 shall:
 - (1) Communicate the authoritative copy of the electronic chattel paper to the debtor or the electronic chattel paper's designated custodian;
 - (2) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
 - (3) Take appropriate action to enable the debtor or the debtor's designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

- d. A secured party having control of investment property under subdivision b of subsection 4 of section 41-08-06 or subsection 2 of section 41-09-06 shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and
- e. A secured party having control of a letter-of-credit right under section 41-09-07 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

41-09-19. (9-209) Duties of secured party if account debtor has been notified of assignment.

1. Except as otherwise provided in subsection 3, this section applies if:
 - a. There is no outstanding secured obligation; and
 - b. The secured party is not committed to make advances, incur obligations, or otherwise give value.
2. Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under subsection 1 of section 41-09-68 an authenticated record that releases the account debtor from any further obligation to the secured party.
3. This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

41-09-20. (9-210) Request for accounting - Request regarding list of collateral or statement of account.

1. In this section:
 - a. "Request" means a record of a type described in subdivision b, c, or d.
 - b. "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.
 - c. "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.
 - d. "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or

correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

2. Subject to subsections 3 through 6, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:
 - a. In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and
 - b. In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.
3. A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.
4. A person that receives a request regarding a list of collateral, claims no interest in the collateral when that person receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:
 - a. Disclaiming any interest in the collateral; and
 - b. If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.
5. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:
 - a. Disclaiming any interest in the obligations; and
 - b. If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.
6. A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

41-09-21. (9-301) Law governing perfection and priority of security interests. Except as otherwise provided in sections 41-09-23 through 41-09-26, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

1. Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.
2. While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.
3. Except as otherwise provided in subsection 4, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:
 - a. Perfection of a security interest in the goods by filing a fixture filing;
 - b. Perfection of a security interest in timber to be cut; and
 - c. The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.
4. The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

41-09-22. (9-302) Law governing perfection and priority of agricultural liens. While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

41-09-23. (9-303) Law governing perfection and priority of security interests in goods covered by a certificate of title.

1. This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.
2. Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.
3. The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

41-09-24. (9-304) Law governing perfection and priority of security interests in deposit accounts or certificates of deposit.

1. The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account or certificate of deposit maintained with that bank.

2. The following rules determine a bank's jurisdiction for purposes of this part:
 - a. If an agreement between the bank and the debtor 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.
 - b. If subdivision a does not apply and an agreement between the bank and its customer governing the deposit account or certificate of deposit expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
 - c. If neither subdivision a nor b applies and an agreement between the bank and the bank's customer governing the deposit account or certificate of deposit expressly provides that the deposit account or certificate of deposit is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
 - d. If none of the preceding subdivisions applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.
 - e. If none of the preceding subdivisions applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

41-09-25. (9-305) Law governing perfection and priority of security interests in investment property.

1. Except as otherwise provided in subsection 3, the following rules apply:
 - a. While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.
 - b. The local law of the issuer's jurisdiction as specified in subsection 4 of section 41-08-10 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.
 - c. The local law of the securities intermediary's jurisdiction as specified in subsection 5 of section 41-08-10 governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.
 - d. The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

2. The following rules determine a commodity intermediary's jurisdiction for purposes of sections 41-09-21 through 41-09-62:
 - a. If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of sections 41-09-21 through 41-09-62, this chapter, or this title, that jurisdiction is the commodity intermediary's jurisdiction.
 - b. If subdivision a does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
 - c. If neither subdivision a nor b applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
 - d. If none of the preceding subdivisions applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.
 - e. If none of the preceding subdivisions applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.
3. The local law of the jurisdiction in which the debtor is located governs:
 - a. Perfection of a security interest in investment property by filing;
 - b. Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and
 - c. Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

41-09-26. (9-306) Law governing perfection and priority of security interests in letter-of-credit rights.

1. Subject to subsection 3, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.
2. For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in section 41-05-16.

3. This section does not apply to a security interest that is perfected only under subsection 4 of section 41-09-28.

41-09-27. (9-307) Location of debtor.

1. In this section, "place of business" means a place where a debtor conducts its affairs.
2. Except as otherwise provided in this section, the following rules determine a debtor's location:
 - a. A debtor who is an individual is located at the individual's principal residence.
 - b. A debtor that is an organization and has only one place of business is located at its place of business.
 - c. A debtor that is an organization and has more than one place of business is located at its chief executive office.
3. Subsection 2 applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection 2 does not apply, the debtor is located in the District of Columbia.
4. A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections 2 and 3.
5. A registered organization that is organized under the law of a state is located in that state.
6. Except as otherwise provided in subsection 9, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:
 - a. In the state that the law of the United States designates, if the law designates a state of location;
 - b. In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or
 - c. In the District of Columbia, if neither subdivision a nor b applies.
7. A registered organization continues to be located in the jurisdiction specified by subsection 5 or 6 notwithstanding:
 - a. The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

- b. The dissolution, winding up, or cancellation of the existence of the registered organization.
- 8. The United States is located in the District of Columbia.
- 9. A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.
- 10. A foreign air carrier under the Federal Aviation Act of 1958, as amended, [Pub. L. 85-726; 72 Stat. 731] is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.
- 11. This section applies only for purposes of this part.

41-09-28. (9-308) When security interest or agricultural lien is perfected - Continuity of perfection.

- 1. Except as otherwise provided in this section and section 41-09-29, a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 41-09-30 through 41-09-36 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.
- 2. An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 41-09-30 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.
- 3. A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this chapter and is later perfected by another method under this chapter, without an intermediate period when it was unperfected.
- 4. Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.
- 5. Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.
- 6. Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.
- 7. Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

41-09-29. (9-309) Security interest perfected upon attachment. The following security interests are perfected when they attach:

1. A purchase-money security interest in consumer goods, except as otherwise provided in subsection 2 of section 41-09-31 with respect to consumer goods that are subject to a statute or treaty described in subsection 1 of section 41-09-31;
2. An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;
3. A sale of a payment intangible;
4. A sale of a promissory note;
5. A security interest created by the assignment of a health care insurance receivable to the provider of the health care goods or services;
6. A security interest arising under section 41-02-46, section 41-02-53, subsection 3 of section 41-02-90, or subsection 5 of section 41-02.1-56, until the debtor obtains possession of the collateral;
7. A security interest of a collecting bank arising under section 41-04-22;
8. A security interest of an issuer or nominated person arising under section 41-05-18;
9. A security interest arising in the delivery of a financial asset under subsection 3 of section 41-09-16;
10. A security interest in investment property created by a broker or securities intermediary;
11. A security interest in a commodity contract or a commodity account created by a commodity intermediary;
12. An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
13. A security interest created by an assignment of a beneficial interest in a decedent's estate.

41-09-30. (9-310) When filing required to perfect security interest or agricultural lien - Security interests and agricultural liens to which filing provisions do not apply.

1. Except as otherwise provided in subsection 2 and subsection 2 of section 41-09-32, a financing statement must be filed to perfect all security interests and agricultural liens.
2. The filing of a financing statement is not necessary to perfect a security interest:
 - a. That is perfected under subsection 4, 5, 6, or 7 of section 41-09-28;
 - b. That is perfected under section 41-09-29 when it attaches;

- c. In property subject to a statute, regulation, or treaty described in subsection 1 of section 41-09-31;
 - d. In goods in possession of a bailee which is perfected under subdivision a or b of subsection 4 of section 41-09-32;
 - e. In certificated securities, documents, goods, or instruments which is perfected without filing or possession under subsection 5, 6, or 7 of section 41-09-32;
 - f. In collateral in the secured party's possession under section 41-09-33;
 - g. In a certificated security which is perfected by delivery of the security certificate to the secured party under section 41-09-33;
 - h. In deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or uncertificated certificates of deposit, which is perfected by control under section 41-09-34;
 - i. In proceeds which is perfected under section 41-09-35;
 - j. That is perfected under section 41-09-36; or
 - k. In agricultural liens created by chapter 35-17, 35-30, or 35-31.
3. If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

41-09-31. (9-311) Perfection of security interests in property subject to certain statutes, regulations, and treaties.

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;
 - 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.
2. Compliance with the requirements of a statute, regulation, or treaty described in subsection 1 for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this chapter. Except as otherwise provided in subsection 4 and sections

41-09-33 and subsections 4 and 5 of section 41-09-36 for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection 1 may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

3. Except as otherwise provided in subsection 4 and subsections 4 and 5 of section 41-09-36, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection 1 are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this chapter.
4. During any period in which collateral subject to a statute specified in subdivision b of subsection 1 is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

41-09-32. (9-312) Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, money, and uncertificated certificates of deposit - Perfection by permissive filing - Temporary perfection without filing or transfer of possession.

1. A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.
2. Except as otherwise provided in subsections 3 and 4 of section 41-09-35 for proceeds:
 - a. A security interest in a deposit account or an uncertificated certificate of deposit may be perfected only by control under section 41-09-34;
 - b. And except as otherwise provided in subsection 4 of section 41-09-28, a security interest in a letter-of-credit right may be perfected only by control under section 41-09-34; and
 - c. A security interest in money or a certificated certificate of deposit may be perfected only by the secured party's taking possession under section 41-09-33.
3. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:
 - a. A security interest in the goods may be perfected by perfecting a security interest in the document; and
 - b. A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

4. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:
 - a. Issuance of a document in the name of the secured party;
 - b. The bailee's receipt of notification of the secured party's interest; or
 - c. Filing as to the goods.
5. A security interest in certificated certificates of deposit, certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.
6. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:
 - a. Ultimate sale or exchange; or
 - b. Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.
7. A perfected security interest in a certificated certificate of deposit, certificated security, or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate, certificated certificate of deposit, or instrument to the debtor for the purpose of:
 - a. Ultimate sale or exchange; or
 - b. Presentation, collection, enforcement, renewal, or registration of transfer.
8. After the twenty-day period specified in subsection 5, 6, or 7 expires, perfection depends upon compliance with this chapter.

41-09-33. (9-313) When possession by or delivery to secured party perfects security interest without filing.

1. Except as otherwise provided in subsection 2, a secured party may perfect a security interest in certificated certificates of deposit, negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 41-08-27.
2. With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in subsection 4 of section 41-09-36.

3. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

 - a. The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
 - b. The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.
4. If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.
5. A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 41-08-27 and remains perfected by delivery until the debtor obtains possession of the security certificate.
6. A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.
7. If a person acknowledges that it holds possession for the secured party's benefit:

 - a. The acknowledgment is effective under subsection 3 or subsection 1 of section 41-09-21, even if the acknowledgment violates the rights of a debtor; and
 - b. Unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.
8. A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

 - a. To hold possession of the collateral for the secured party's benefit; or
 - b. To redeliver the collateral to the secured party.
9. A secured party does not relinquish possession, even if a delivery under subsection 8 violates the rights of a debtor. A person to which collateral is delivered under subsection 8 does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this chapter otherwise provides.

41-09-34. (9-314) Perfection by control.

1. A security interest in investment property, deposit accounts, uncertificated certificates of deposit, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under section 41-09-04, 41-09-05, 41-09-06, or 41-09-07.
2. A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or uncertificated certificates of deposit is perfected by control under section 41-09-04, 41-09-05, or 41-09-07 when the secured party obtains control and remains perfected by control only while the secured party retains control.
3. A security interest in investment property is perfected by control under section 41-09-06 from the time the secured party obtains control and remains perfected by control until:
 - a. The secured party does not have control; and
 - b. One of the following occurs:
 - (1) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
 - (2) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
 - (3) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

41-09-35. (9-315) Secured party's rights on disposition of collateral and in proceeds.

1. Except as otherwise provided in this chapter and in subsection 2 of section 41-02-48:
 - a. A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and
 - b. A security interest attaches to any identifiable proceeds of collateral.
2. Proceeds that are commingled with other property are identifiable proceeds:
 - a. If the proceeds are goods, to the extent provided by section 41-09-56; and
 - b. If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this chapter with respect to commingled property of the type involved.

3. A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.
4. A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:
 - a. The following conditions are satisfied:
 - (1) A filed financing statement covers the original collateral;
 - (2) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
 - (3) The proceeds are not acquired with cash proceeds;
 - b. The proceeds are identifiable cash proceeds; or
 - c. The security interest in the proceeds is perfected other than under subsection 3 when the security interest attaches to the proceeds or within twenty days thereafter.
5. If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subdivision a of subsection 4 becomes unperfected at the later of:
 - a. When the effectiveness of the filed financing statement lapses under section 41-09-86 or is terminated under section 41-09-84; or
 - b. The twenty-first day after the security interest attaches to the proceeds.

41-09-36. (9-316) Continued perfection of security interest following change in governing law.

1. A security interest perfected pursuant to the law of the jurisdiction designated in subsection 1 of section 41-09-21 or subsection 3 of section 41-09-25 remains perfected until the earliest of:
 - a. The time perfection would have ceased under the law of that jurisdiction;
 - b. The expiration of four months after a change of the debtor's location to another jurisdiction; or
 - c. The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.
2. If a security interest described in subsection 1 becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and

- is deemed never to have been perfected as against a purchaser of the collateral for value.
3. A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:
 - a. The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
 - b. Thereafter the collateral is brought into another jurisdiction; and
 - c. Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.
 4. Except as otherwise provided in subsection 5, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.
 5. A security interest described in subsection 4 becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under subsection 2 of section 41-09-31 or section 41-09-33 are not satisfied before the earlier of:
 - a. The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or
 - b. The expiration of four months after the goods had become so covered.
 6. A security interest in deposit accounts, certificates of deposit, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:
 - a. The time the security interest would have become unperfected under the law of that jurisdiction; or
 - b. The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.
 7. If a security interest described in subsection 6 becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

41-09-37. (9-317) Interests that take priority over or take free of security interest or agricultural lien.

1. A security interest or an agricultural lien is subordinate to the rights of:
 - a. A person entitled to priority under section 41-09-42; and
 - b. Except as otherwise provided in subsection 5, a person that becomes a lien creditor before the earlier of the time:
 - (1) The security interest or agricultural lien is perfected; or
 - (2) One of the conditions specified in subdivision c of subsection 2 of section 41-09-13 is met and a financing statement covering the collateral is filed.
2. Except as otherwise provided in subsection 5, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
3. Except as otherwise provided in subsection 5, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
4. A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.
5. Except as otherwise provided in sections 41-09-40 and 41-09-41, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

41-09-38. (9-318) No interest retained in right to payment that is sold - Rights and title of seller of account or chattel paper with respect to creditors and purchasers.

1. A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.
2. For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

41-09-39. (9-319) Rights and title of consignee with respect to creditors and purchasers.

1. Except as otherwise provided in subsection 2, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.
2. For purposes of determining the rights of a creditor of a consignee, law other than this chapter determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

41-09-40. (9-320) Buyer of goods.

1. Except as otherwise provided in subsection 5, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence. A crop or livestock buyer is a buyer in the ordinary course of business as to security interests and agricultural liens if the buyer qualifies under subsection 9. As used in this section, a crop or livestock buyer is a person who buys crops or livestock from, or who sells crops or livestock on a fee or commission for, a person engaged in farming operations.
2. Except as otherwise provided in subsection 5, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:
 - a. Without knowledge of the security interest;
 - b. For value;
 - c. Primarily for the buyer's personal, family, or household purposes; and
 - d. Before the filing of a financing statement covering the goods.
3. To the extent that it affects the priority of a security interest over a buyer of goods under subsection 2, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by subsections 1 and 2 of section 41-09-36.
4. A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.
5. Subsections 1 and 2 do not affect a security interest in goods in the possession of the secured party under section 41-09-33.
6. If a secured party who has perfected a security interest in crops or livestock, or if a lienholder who has created a lien by statute or

otherwise, which includes agricultural liens, intends to impose liability for the security interest or lien against a crop or livestock buyer, the name of the secured party or lienholder must appear on the most current list distributed by the secretary of state pursuant to section 34 of this Act. In order to appear on the list, secured parties or lienholders must file with the secretary of state or in the office of the register of deeds in any county in this state a form prescribed by the secretary of state which contains the information prescribed by the secretary of state under section 41-09-92 or contained on a form prescribed by the secretary of state under section 35-17-04, 35-30-02, or 35-31-02.

7. When a crop or livestock buyer issues a check or draft to a person engaged in farming operations in payment for crops or livestock in order to take free of security interests or liens against such crops or livestock, the crop or livestock buyer must issue the check or draft for payment jointly to the person engaged in farming operations and those secured parties or lienholders who have a security interest or lien in the crops or livestock sold and whose names appear on the most current list or lists distributed by the secretary of state at the time the check or draft is issued. A claim for relief may not be commenced by a secured party or lienholder against a crop or livestock buyer for a loss incurred as a result of issuing a check or draft after January 1, 1986, which does not include the name of a secured party or lienholder under this section more than eighteen months after the date of the check or draft unless within the eighteen-month period the secured party or lienholder sends a notice as provided under this section, but in no event can the action be commenced more than five years after the date of the check or draft. The notice must:

 - a. Be sent by certified mail to, or personally served upon, the crop or livestock buyer;
 - b. Name the person engaged in farming operations and the date of the check or draft that gives rise to the claim;
 - c. State the intention of the secured party or lienholder to make a claim;
 - d. State the amount the secured party or lienholder is claiming;
 - e. Give a description of and the amount of crops or livestock upon which the claim is based; and
 - f. State that the secured party or lienholder has commenced an action seeking judgment against the person engaged in farming operations or such person has filed or has been placed in bankruptcy or receivership proceedings under chapter 32-10.
8. A complaint by a secured party or lienholder may not be filed or served against a crop or livestock buyer for collection of any loss sustained by the secured party or lienholder through any transaction filed pursuant to subsection 6 until:

 - a. A judgment has been obtained and a good-faith effort made to collect that judgment against the person engaged in farming operations, or that proceedings against the person engaged in

farming operations were stayed by federal bankruptcy proceedings, or that receivership proceedings have been commenced under chapter 32-10;

- b. Within eighteen months following the date of the check or draft, the notice required to be sent pursuant to subsection 7 was served upon the crop or livestock buyer and reciting or incorporating by reference all the information contained in that notice; and
 - c. A list is made of any other collateral taken by the secured party or lienholder as security on the same debt from the person engaged in farming operations, including a statement of value, status, and plans for application of such collateral to the indebtedness of the person engaged in farming operations.
9. A crop or livestock buyer takes free of any security interest created by, or any lien against crops or livestock of, the person engaged in farming operations if:
- a. The crop or livestock buyer has complied with the requirements of subsection 7;
 - b. Evidence of security interests or liens does not appear on the most current list prepared and distributed by the secretary of state pursuant to sections 33 and 34 of this Act; or
 - c. The name of the person represented to be the seller of the crops or livestock does not appear on the most current list prepared and distributed pursuant to sections 33 and 34 of this Act.

41-09-41. (9-321) Licensee of general intangible and lessee of goods in ordinary course of business.

1. In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.
2. A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.
3. A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

41-09-42. (9-322) Priorities among conflicting security interests in and agricultural liens on same collateral.

1. Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:
 - a. Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.
 - b. A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.
 - c. The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.
2. For the purposes of subdivision a of subsection 1:
 - a. The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and
 - b. The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.
3. Except as otherwise provided in subsection 6, a security interest in collateral which qualifies for priority over a conflicting security interest under section 41-09-47, 41-09-48, 41-09-49, 41-09-50, or 41-09-51 also has priority over a conflicting security interest in:
 - a. Any supporting obligation for the collateral; and
 - b. Proceeds of the collateral if:
 - (1) The security interest in proceeds is perfected;
 - (2) The proceeds are cash proceeds or of the same type as the collateral; and
 - (3) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.
4. Subject to subsection 5 and except as otherwise provided in subsection 6, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

5. Subsection 4 applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.
6. Subsections 1 through 5 are subject to:
 - a. Subsection 7 and the other provisions of this part;
 - b. Section 41-04-22 with respect to a security interest of a collecting bank;
 - c. Section 41-05-18 with respect to a security interest of an issuer or nominated person; and
 - d. Section 41-09-10 with respect to a security interest arising under chapter 41-02 or 41-02.1.
7. A perfected agricultural lien on collateral has priority over the conflicting rights of a lien creditor and over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

41-09-43. (9-323) Future advances.

1. Except as otherwise provided in subsection 3, for purposes of determining the priority of a perfected security interest under subdivision a of subsection 1 of section 41-09-42, perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:
 - a. Is made while the security interest is perfected only:
 - (1) Under section 41-09-29 when it attaches; or
 - (2) Temporarily under subsection 5, 6, or 7 of section 41-09-32; and
 - b. Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 41-09-29 or subsection 5, 6, or 7 of section 41-09-32.
2. Except as otherwise provided in subsection 3, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:
 - a. Without knowledge of the lien; or
 - b. Pursuant to a commitment entered into without knowledge of the lien.
3. Subsections 1 and 2 do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

4. Except as otherwise provided in subsection 5, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:
 - a. The time the secured party acquires knowledge of the buyer's purchase; or
 - b. Forty-five days after the purchase.
5. Subsection 4 does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.
6. Except as otherwise provided in subsection 7, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:
 - a. The time the secured party acquires knowledge of the lease; or
 - b. Forty-five days after the lease contract becomes enforceable.
7. Subsection 6 does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

41-09-44. (9-324) Priority of purchase-money security interests.

1. Except as otherwise provided in subsection 7, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 41-09-47, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.
2. Subject to subsection 3 and except as otherwise provided in subsection 7, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 41-09-50, and, except as otherwise provided in section 41-09-47, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:
 - a. The purchase-money security interest is perfected when the debtor receives possession of the inventory;
 - b. The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
 - c. The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

was acquired for use has priority in the goods and proceeds of the goods under this section.

7. If more than one security interest qualifies for priority in the same collateral under subsection 1, 2, 3, or 4:
 - a. A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
 - b. In all other cases, subsection 1 of section 41-09-42 applies to the qualifying security interests.

41-09-45. (9-325) Priority of security interests in transferred collateral.

1. Except as otherwise provided in subsection 2, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:
 - a. The debtor acquired the collateral subject to the security interest created by the other person;
 - b. The security interest created by the other person was perfected when the debtor acquired the collateral; and
 - c. There is no period thereafter when the security interest is unperfected.
2. Subsection 1 subordinates a security interest only if the security interest:
 - a. Otherwise would have priority solely under subsection 1 of section 41-09-42 or section 41-09-44; or
 - b. Arose solely under subsection 3 of section 41-02-90 or subsection 5 of section 41-02.1-56.

41-09-46. (9-326) Priority of security interests created by new debtor.

1. Subject to subsection 2, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under section 41-09-79 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under section 41-09-79.
2. The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under section 41-09-79. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

41-09-47. (9-327) Priority of security interests in deposit account and uncertificated certificate of deposit. The following rules govern priority among

conflicting security interests in the same deposit account or uncertificated certificate of deposit:

1. A security interest held by a secured party having control of the deposit account or uncertificated certificate of deposit under section 41-09-04 has priority over a conflicting security interest held by a secured party that does not have control.
2. Except as otherwise provided in subsections 3 and 4, security interests perfected by control under section 41-09-34 rank according to priority in time of obtaining control.
3. Except as otherwise provided in subsection 4, a security interest held by the bank with which the deposit account or uncertificated certificate of deposit is maintained has priority over a conflicting security interest held by another secured party.
4. A security interest perfected by control under subdivision c of subsection 1 of section 41-09-04 has priority over a security interest held by the bank with which the deposit account or uncertificated certificate of deposit is maintained.

41-09-48. (9-328) Priority of security interests in investment property.

The following rules govern priority among conflicting security interests in the same investment property:

1. A security interest held by a secured party having control of investment property under section 41-09-06 has priority over a security interest held by a secured party that does not have control of the investment property.
2. Except as otherwise provided in subsections 3 and 4, conflicting security interests held by secured parties each of which has control under section 41-09-06 rank according to priority in time of:
 - a. If the collateral is a security, obtaining control;
 - b. If the collateral is a security entitlement carried in a securities account and:
 - (1) If the secured party obtained control under subdivision a of subsection 4 of section 41-08-06, the secured party's becoming the person for which the securities account is maintained;
 - (2) If the secured party obtained control under subdivision b of subsection 4 of section 41-08-06, the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or
 - (3) If the secured party obtained control through another person under subdivision c of subsection 4 of section 41-08-06, the time on which priority would be based under this subsection if the other person were the secured party; or

- c. If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in subdivision b of subsection 2 of section 41-09-06 with respect to commodity contracts carried or to be carried with the commodity intermediary.
3. A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.
4. A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.
5. A security interest in a certificated security in registered form which is perfected by taking delivery under subsection 1 of section 41-09-33 and not by control under section 41-09-34 has priority over a conflicting security interest perfected by a method other than control.
6. Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under section 41-09-06 rank equally.
7. In all other cases, priority among conflicting security interests in investment property is governed by sections 41-09-42 and 41-09-43.

41-09-49. (9-329) Priority of security interests in letter-of-credit right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

1. A security interest held by a secured party having control of the letter-of-credit right under section 41-09-07 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.
2. Security interests perfected by control under section 41-09-34 rank according to priority in time of obtaining control.

41-09-50. (9-330) Priority of purchaser of chattel paper or instrument.

1. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:
 - a. In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 41-09-05; and
 - b. The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.
2. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of

inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 41-09-05 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

3. Except as otherwise provided in section 41-09-47, a purchaser having priority in chattel paper under subsection 1 or 2 also has priority in proceeds of the chattel paper to the extent that:
 - a. Section 41-09-42 provides for priority in the proceeds; or
 - b. The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.
4. Except as otherwise provided in subsection 1 of section 41-09-51, a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.
5. For purposes of subsections 1 and 2, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.
6. For purposes of subsections 2 and 4, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

41-09-51. (9-331) Priority of rights of purchasers of instruments, documents, and securities under other articles - Priority of interests in financial assets and security entitlements under chapter 41-08.

1. This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in chapters 41-03, 41-07, and 41-08.
2. This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under chapter 41-08.
3. Filing under this chapter does not constitute notice of a claim or defense to the holders, purchasers, or persons described in subsections 1 and 2.

41-09-52. (9-332) Transfer of money - Transfer of funds from deposit account.

1. A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

2. A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

41-09-53. (9-333) Priority of certain liens arising by operation of law.

1. In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:
 - a. Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;
 - b. Which is created by statute or rule of law in favor of the person; and
 - c. Whose effectiveness depends on the person's possession of the goods.
2. A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

41-09-54. (9-334) Priority of security interests in fixtures and crops.

1. A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.
2. This chapter does not prevent creation of an encumbrance upon fixtures under real-property law.
3. In cases not governed by subsections 4 through 8, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.
4. Except as otherwise provided in subsection 8, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:
 - a. The security interest is a purchase-money security interest;
 - b. The interest of the encumbrancer or owner arises before the goods become fixtures; and
 - c. The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.
5. A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:
 - a. The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

9. A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.
10. Subsection 9 prevails over any inconsistent provisions of section 47-16-03.

41-09-55. (9-335) Accessions.

1. A security interest may be created in an accession and continues in collateral that becomes an accession.
2. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.
3. Except as otherwise provided in subsection 4, the other provisions of this part determine the priority of a security interest in an accession.
4. A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under subsection 2 of section 41-09-51.
5. After default, subject to sections 41-09-98 through 41-09-123, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.
6. A secured party that removes an accession from other goods under subsection 5 shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

41-09-56. (9-336) Commingled goods.

1. In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.
2. A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.
3. If collateral becomes commingled goods, a security interest attaches to the product or mass.
4. If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection 3 is perfected.

5. Except as otherwise provided in subsection 6, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection 3.
6. If more than one security interest attaches to the product or mass under subsection 3, the following rules determine priority:
 - a. A security interest that is perfected under subsection 4 has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.
 - b. If more than one security interest is perfected under subsection 4, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

41-09-57. (9-337) Priority of security interests in goods covered by certificate of title. If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

1. A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and
2. The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under subsection 2 of section 41-09-31, after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

41-09-58. (9-338) Priority of security interest perfected by filed financing statement providing certain incorrect information. If a security interest is perfected by a filed financing statement providing information described in subdivision e of subsection 2 of section 41-09-87 which is incorrect at the time the financing statement is filed:

1. The security interest is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and
2. A purchaser, other than a secured party, of the collateral takes free of the security interest to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

41-09-59. (9-339) Priority subject to subordination. This chapter does not preclude subordination by agreement by a person entitled to priority.

41-09-60. (9-340) Effectiveness of right of recoupment or set-off against deposit account or certificate of deposit.

1. Except as otherwise provided in subsection 3, a bank with which a deposit account or certificate of deposit is maintained may exercise any

right of recoupment or set-off against a secured party that holds a security interest in the deposit account or certificate of deposit.

2. Except as otherwise provided in subsection 3, the application of this chapter to a security interest in a deposit account or certificate of deposit does not affect a right of recoupment or set-off of the secured party as to a deposit account or certificate of deposit maintained with the secured party.
3. The exercise by a bank of a set-off against a deposit account or certificate of deposit is ineffective against a secured party that holds a security interest in the deposit account or certificate of deposit which is perfected by control under subdivision c of subsection 1 of section 41-09-04, if the set-off is based on a claim against the debtor.

41-09-61. (9-341) Bank's rights and duties with respect to deposit account or certificate of deposit. Except as otherwise provided in subsection 3 of section 41-09-60, and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account or certificate of deposit maintained with the bank are not terminated, suspended, or modified by:

1. The creation, attachment, or perfection of a security interest in the deposit account or certificate of deposit;
2. The bank's knowledge of the security interest; or
3. The bank's receipt of instructions from the secured party.

41-09-62. (9-342) Bank's right to refuse to enter into or disclose existence of control agreement. This chapter does not require a bank to enter into an agreement of the kind described in subdivision b of subsection 1 of section 41-09-04, even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

41-09-63. (9-401) Alienability of debtor's rights.

1. Except as otherwise provided in subsection 2 and sections 41-09-68 through 41-09-71, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this chapter.
2. An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

41-09-64. (9-402) Secured party not obligated on contract of debtor or in tort. The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

41-09-65. (9-403) Agreement not to assert defenses against assignee.

1. In this section, "value" has the meaning provided in subsection 1 of section 41-03-29.

2. Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

 - a. For value;
 - b. In good faith;
 - c. Without notice of a claim of a property or possessory right to the property assigned; and
 - d. Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under subsection 1 of section 41-03-31.
3. Subsection 2 does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under subsection 2 of section 41-03-31.
4. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

 - a. The record has the same effect as if the record included such a statement; and
 - b. The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.
5. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
6. Except as otherwise provided in subsection 4, this section does not displace law other than this chapter which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

41-09-66. (9-404) Rights acquired by assignee - Claims and defenses against assignee.

1. Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections 2 through 5, the rights of an assignee are subject to:

 - a. All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
 - b. Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a

notification of the assignment authenticated by the assignor or the assignee.

2. Subject to subsection 3 and except as otherwise provided in subsection 4, the claim of an account debtor against an assignor may be asserted against an assignee under subsection 1 only to reduce the amount the account debtor owes.
3. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
4. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.
5. This section does not apply to an assignment of a health care insurance receivable.

41-09-67. (9-405) Modification of assigned contract.

1. A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections 2 through 4.
2. Subsection 1 applies to the extent that:
 - a. The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or
 - b. The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under subsection 1 of section 41-09-68.
3. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
4. This section does not apply to an assignment of a health care insurance receivable.

41-09-68. (9-406) Discharge of account debtor - Notification of assignment - Identification and proof of assignment - Restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

1. Subject to subsections 2 through 9, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.
2. Subject to subsection 8, notification is ineffective under subsection 1:

 - a. If it does not reasonably identify the rights assigned;
 - b. To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or
 - c. At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

 - (1) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;
 - (2) A portion has been assigned to another assignee; or
 - (3) The account debtor knows that the assignment to that assignee is limited.
3. Subject to subsection 8, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection 1.
4. Except as otherwise provided in subsection 5 and sections 41-02.1-33 and 41-09-69, and subject to subsection 8, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

 - a. Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or
 - b. Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.
5. Subsection 4 does not apply to the sale of a payment intangible or promissory note.

6. Except as otherwise provided in sections 41-02.1-33 and 41-09-69 and subject to subsections 8 and 9, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:
 - a. Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or
 - b. Provides that the assignment, transfer, creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.
7. Subject to subsection 8, an account debtor may not waive or vary its option under subdivision c of subsection 2.
8. This section is subject to law other than this chapter which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.
9. This section does not apply to an assignment of a health care insurance receivable.

41-09-69. (9-407) Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

1. Except as otherwise provided in subsection 2, a term in a lease agreement is ineffective to the extent that the term:
 - a. Prohibits, restricts, or requires the consent of a party to the lease to the assignment, transfer, creation, attachment, perfection, or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods; or
 - b. Provides that the assignment, transfer, creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.
2. Except as otherwise provided in subsection 6 of section 41-02.1-33, a term described in subdivision b of subsection 1 is effective to the extent that there is:
 - a. A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or
 - b. A delegation of a material performance of either party to the lease contract in violation of the term.

3. The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of subsection 4 of section 41-02.1-33 unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

41-09-70. (9-408) Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective.

1. Except as otherwise provided in subsection 2, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, is ineffective to the extent that the term:
 - a. Would impair the creation, attachment, or perfection of a security interest; or
 - b. Provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.
2. Subsection 1 applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.
3. A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:
 - a. Would impair the creation, attachment, or perfection of a security interest; or
 - b. Provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.
4. To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection 3 would be effective under law other

than this chapter but is ineffective under subsection 1 or 3, the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

- a. Is not enforceable against the person obligated on the promissory note or the account debtor;
- b. Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
- c. Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
- d. Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible;
- e. Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
- f. Does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible.

41-09-71. (9-409) Restrictions on assignment of letter-of-credit rights ineffective.

1. A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:
 - a. Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or
 - b. Provides that the assignment, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.
2. To the extent that a term in a letter of credit is ineffective under subsection 1 but would be effective under law other than this chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

- a. Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;
- b. Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and
- c. Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

41-09-72. (9-501) Filing office.

1. Except as otherwise provided in subsection 2, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:
 - a. The office designated for the filing or recording of a record of a mortgage on the related real property, if:
 - (1) The collateral is as-extracted collateral or timber to be cut; or
 - (2) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or
 - b. The office of the register of deeds in any county in this state or in the office of the secretary of state, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.
2. The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

41-09-73. (9-502) Contents of financing statement - Record of mortgage as financing statement - Time of filing financing statement - Amending financing statement.

1. Subject to subsection 2, a financing statement is sufficient only if the statement:
 - a. Provides the name of the debtor;
 - b. Provides the name of the secured party or a representative of the secured party;
 - c. Indicates the collateral covered by the financing statement;
 - d. If it is a financing statement that is to be filed to gain protection under the central notice system, includes a reasonable description of the property, including the county in which the property is located, and any other additional information required by the Food Security Act of 1985 [Pub. L. 99-198; Stat. 1535; 7 U.S.C. 1631], as

- prescribed by the secretary of state, and, to be sufficient a financing statement must include the social security number or federal tax identification number of the debtor; the name and address of the secured party; and unless electronically filed, the signatures of the debtor and secured parties;
- e. Provides the social security or federal tax identification number of the debtor;
 - f. Provides a mailing address for the secured party; and
 - g. Provides a mailing address for the debtor.
2. Except as otherwise provided in subsection 2 of section 41-09-72, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection 1 and also:
- a. Indicate that it covers this type of collateral;
 - b. Indicate that it is to be filed for record in the real-property records;
 - c. Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and
 - d. If the debtor does not have an interest of record in the real property, provide the name of a record owner.
3. A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:
- a. The record indicates the goods or accounts that it covers;
 - b. The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
 - c. The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real-property records; and
 - d. The record is duly recorded.
4. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.
5. A financing statement filed to gain protection under the central notice system must be amended within three months of a material change to reflect that change. The amended financing statement must be signed by both the debtor and secured party and filed in the same manner as the original financing statement. An electronically filed amendment does not need to be signed.

6. Effective January 1, 2002, 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.

41-09-74. (9-503) Name of debtor and secured party.

1. A financing statement sufficiently provides the name of the debtor:
- a. If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;
 - b. If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;
 - c. If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:
 - (1) Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and
 - (2) Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and
 - d. In other cases:
 - (1) If the debtor has a name, only if it provides the individual or organizational name of the debtor; and
 - (2) If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.
2. A financing statement that provides the name of the debtor in accordance with subsection 1 is not rendered ineffective by the absence of:
- a. A trade name or other name of the debtor; or
 - b. Unless required under paragraph 2 of subdivision d of subsection 1, names of partners, members, associates, or other persons comprising the debtor.
3. A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.
4. Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

5. A financing statement may provide the name of more than one debtor and the name of more than one secured party.

41-09-75. (9-504) Indication of collateral. A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

1. A description of the collateral pursuant to section 41-09-08; or
2. An indication that the financing statement covers all assets or all personal property.

41-09-76. (9-505) Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.

1. A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in subsection 1 of section 41-09-31, using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor".
2. This part applies to the filing of a financing statement under subsection 1 and, as appropriate, to compliance that is equivalent to filing a financing statement under subsection 2 of section 41-09-31, but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

41-09-77. (9-506) Effect of errors or omissions.

1. A financing statement substantially satisfying the requirements of this part is effective, even if the financing statement has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.
2. Except as otherwise provided in subsection 3, a financing statement that fails sufficiently to provide the name of the debtor in accordance with subsection 1 of section 41-09-74 is seriously misleading.
3. If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with subsection 1 of section 41-09-74, the name provided does not make the financing statement seriously misleading.
4. For purposes of subsection 2 of section 41-09-79, the "debtor's correct name" in subsection 3 means the correct name of the new debtor.

41-09-78. (9-507) Effect of certain events on effectiveness of financing statement.

1. A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.
2. Except as otherwise provided in subsection 3 and section 41-09-79, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 41-09-77.
3. If a debtor so changes its name that a filed financing statement becomes seriously misleading under section 41-09-77:
 - a. The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and
 - b. The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

41-09-79. (9-508) Effectiveness of financing statement if new debtor becomes bound by security agreement.

1. Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.
2. If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection 1 to be seriously misleading under section 41-09-77:
 - a. The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under subsection 4 of section 41-09-13; and
 - b. The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under subsection 4 of section 41-09-13 unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.
3. This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under subsection 1 of section 41-09-78.

41-09-80. (9-509) Persons entitled to file a record.

1. A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

- a. The debtor authorizes the filing in an authenticated record or pursuant to subsection 2 or 3; or
 - b. The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.
2. By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:
 - a. The collateral described in the security agreement; and
 - b. Property that becomes collateral under subdivision b of subsection 1 of section 41-09-35, regardless of whether the security agreement expressly covers proceeds.
3. By acquiring collateral in which a security interest or agricultural lien continues under subdivision a of subsection 1 of section 41-09-35, a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under subdivision b of subsection 1 of section 41-09-35.
4. A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:
 - a. The secured party of record authorizes the filing; or
 - b. The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required under section 41-09-84, the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed. The filing office shall notify the secured party of a filing under this subsection.
5. If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection 4.

41-09-81. (9-510) Effectiveness of filed record.

1. A filed record is effective only to the extent that it was filed by a person that may file it under section 41-09-80.
2. A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.
3. A continuation statement that is not filed within the six-month period prescribed by subsection 4 of section 41-09-86 is ineffective.

41-09-82. (9-511) Secured party of record.

1. A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a

representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under subsection 1 of section 41-09-85, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

2. If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under subsection 2 of section 41-09-85, the assignee named in the amendment is a secured party of record.
3. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

41-09-83. (9-512) Amendment of financing statement.

1. Subject to section 41-09-80, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection 5, otherwise amend the information provided in, a financing statement by filing an amendment that:
 - a. Identifies, by its file number, the initial financing statement to which the amendment relates; and
 - b. If the amendment relates to an initial financing statement filed or recorded in a filing office described in subdivision a of subsection 1 of section 41-09-72, provides the information specified in subsection 2 of section 41-09-73.
2. Except as otherwise provided in section 41-09-86, the filing of an amendment does not extend the period of effectiveness of the financing statement.
3. A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.
4. A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.
5. An amendment is ineffective to the extent it:
 - a. Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or
 - b. Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

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 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.

41-09-85. (9-514) Assignment of powers of secured party of record.

1. Except as otherwise provided in subsection 3, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.
2. Except as otherwise provided in subsection 3, a secured party of record may assign of record all or part of its power to authorize an amendment

to a financing statement by filing in the filing office an amendment of the financing statement which:

- a. Identifies, by its file number, the initial financing statement to which it relates;
 - b. Provides the name of the assignor; and
 - c. Provides the name and mailing address of the assignee.
3. An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under subsection 3 of section 41-09-73 may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than this title.

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 is effective for a period of five years after the date of filing.
2. (Reserved)
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.

41-09-87. (9-516) What constitutes filing - Effectiveness of filing.

1. Except as otherwise provided in subsection 2, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.
2. Filing does not occur with respect to a record that a filing office refuses to accept because:
 - a. The record is not communicated by a method or medium of communication authorized by the filing office;
 - b. An amount equal to or greater than the applicable filing fee is not tendered;
 - c. The filing office is unable to index the record because:
 - (1) In the case of an initial financing statement, the record does not provide a name for the debtor;
 - (2) In the case of an amendment or correction statement, the record:
 - (a) Does not identify the initial financing statement as required by section 41-09-83 or 41-09-89, as applicable; or
 - (b) Identifies an initial financing statement whose effectiveness has lapsed under section 41-09-86;
 - (3) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or
 - (4) In the case of a record filed or recorded in the filing office described in subdivision a of subsection 1 of section 41-09-72, the record does not provide a sufficient description of the real property to which it relates;
 - d. In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
 - e. In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:
 - (1) Provide a mailing address for the debtor;

- (2) Indicate whether the debtor is an individual or an organization; or
- (3) If the financing statement indicates that the debtor is an organization, provide:
 - (a) A type of organization for the debtor;
 - (b) A jurisdiction of organization for the debtor; or
 - (c) An organizational identification number for the debtor or indicate that the debtor has none;
- f. In the case of an assignment reflected in an initial financing statement under subsection 1 of section 41-09-85 or an amendment filed under subsection 2 of section 41-09-85, the record does not provide a name and mailing address for the assignee;
- g. In the case of a continuation statement, the record is not filed within the six-month period prescribed by subsection 4 of section 41-09-86; or
- h. The record does not contain the social security number or the federal tax identification number of the debtor.
- 3. For purposes of subsection 2:
 - a. A record does not provide information if the filing office is unable to read or decipher the information; and
 - b. A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 41-09-83, 41-09-85, or 41-09-89, is an initial financing statement.
- 4. A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection 2, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

41-09-88. (9-517) Effect of indexing errors. The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

41-09-89. (9-518) Claim concerning inaccurate or wrongfully filed record.

- 1. A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.
- 2. A correction statement must:
 - a. Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

- b. To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.
5. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under subsection 1 of section 41-09-85 or an amendment filed under subsection 2 of section 41-09-85:
 - a. Under the name of the assignor as grantor; and
 - b. To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.
6. The filing office shall maintain a capability:
 - a. To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and
 - b. To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.
7. The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under section 41-09-86 with respect to all secured parties of record.
8. The filing office shall perform the acts required by subsections 1 through 5 at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

41-09-91. (9-520) Acceptance and refusal to accept record.

1. A filing office shall refuse to accept a record for filing for a reason set forth in subsection 2 of section 41-09-87 and may refuse to accept a record for filing only for a reason set forth in subsection 2 of section 41-09-87.
2. If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than two business days after the filing office receives the record.
3. A filed financing statement satisfying subsections 1 and 2 of section 41-09-73 is effective, even if the filing office is required to refuse to accept it for filing under subsection 1. However, section 41-09-58 applies to a filed financing statement providing information described in

subdivision e of subsection 2 of section 41-09-87 which is incorrect at the time the financing statement is filed.

4. If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

41-09-92. (9-521) Uniform form of written financing statement and amendment.

1. A filing office that accepts written records may not refuse to accept a written initial financing statement in the form and format established by the secretary of state, except for a reason set forth in subsection 2 of section 41-09-87.
2. A filing office that accepts written records may not refuse to accept a written record in the form and format established by the secretary of state, except for a reason set forth in subsection 2 of section 41-09-87.

41-09-93. (9-522) Maintenance and destruction of records.

1. The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under section 41-09-86 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.
2. Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection 1.

41-09-94. (9-523) Information from filing office - Sale or license of records.

1. If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to subdivision a of subsection 1 of section 41-09-90 and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:
 - a. Note upon the copy the number assigned to the record pursuant to subdivision a of subsection 1 of section 41-09-90 and the date and time of the filing of the record; and
 - b. Send the copy to the person.
2. If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:
 - a. The information in the record;

41-09-96. (9-525) Fees.

1. The fee for filing and indexing an original statement under this title, fifteen dollars plus one dollar per additional page. An additional fee may not be charged for the same statement to gain protection under the central notice system.
2. The fee for filing and indexing an amendment, continuation, assignment, release, or subordination under this title, ten dollars plus one dollar per additional page. An additional fee may not be charged for the same document to gain protection under the central notice system.
3. A fee may not be charged for responding to a request for information from the filing office communicating whether there is on file any financing statement or verified statement naming a particular debtor.
4. The fee for a filing office providing information on specific filings on a particular debtor, including listing up to four lines of collateral covered by each filing, is seven dollars per debtor for the first five entries, plus two dollars for each additional five entries or fraction thereafter.
5. The fee for a filing office providing copies of each filing for a particular debtor is seven dollars per debtor plus two dollars per page for each page over three pages.
6. The fee for a filing office providing certified copies of filings on a particular debtor is seven dollars plus one dollar per page for attachments.
7. Any fees collected by the secretary of state pursuant to this chapter must be deposited in the general fund in the state treasury, except the fees collected under subsection 6 of section 41-09-94, must be deposited in the secretary of state's general services operating fund.

41-09-97. (9-526) Rules. The secretary of state shall adopt and publish rules to implement this chapter. The rules must be:

1. Consistent with this chapter; and
2. Adopted and published in accordance with chapter 28-32.

41-09-98. (9-601) Rights after default - Judicial enforcement - Consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

1. After default, a secured party has the rights provided in this part and, except as otherwise provided in section 41-09-99, those provided by agreement of the parties. A secured party:
 - a. May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and
 - b. If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

2. A secured party in possession of collateral or control of collateral under section 41-09-04, 41-09-05, 41-09-06, or 41-09-07 has the rights and duties provided in section 41-09-17.
3. The rights under subsections 1 and 2 are cumulative and may be exercised simultaneously.
4. Except as otherwise provided in subsection 7 and section 41-09-102, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.
5. If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:
 - a. The date of perfection of the security interest or agricultural lien in the collateral;
 - b. The date of filing a financing statement covering the collateral; or
 - c. Any date specified in a statute under which the agricultural lien was created.
6. A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.
7. Except as otherwise provided in subsection 3 of section 41-09-104, sections 41-09-98 through 41-09-123 impose no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

41-09-99. (9-602) Waiver and variance of rights and duties. Except as otherwise provided in section 41-09-119, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

1. Paragraph 3 of subdivision d of subsection 2 of section 41-09-17, which deals with use and operation of the collateral by the secured party;
2. Section 41-09-20, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
3. Subsection 3 of section 41-09-104, which deals with collection and enforcement of collateral;
4. Subsection 1 of section 41-09-105 and subsection 3 of section 41-09-111 to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
5. Subsection 1 of section 41-09-105 and subsection 4 of section 41-09-111 to the extent that they require accounting for or payment of surplus proceeds of collateral;

6. Section 41-09-106 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
7. Subsection 2 of section 41-09-107, section 41-09-108, and section 41-09-110, which deal with disposition of collateral;
8. Subsection 6 of section 41-09-111, which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;
9. Sections 41-09-115 through 41-09-117, which deal with acceptance of collateral in satisfaction of obligation;
10. Section 41-09-118, which deals with redemption of collateral;
11. Section 41-09-119, which deals with permissible waivers; and
12. Sections 41-09-120 and 41-09-121, which deal with the secured party's liability for failure to comply with this chapter.

41-09-100. (9-603) Agreement on standards concerning rights and duties.

1. The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 41-09-99 if the standards are not manifestly unreasonable.
2. Subsection 1 does not apply to the duty under section 41-09-106 to refrain from breaching the peace.

41-09-101. (9-604) Procedure if security agreement covers real property or fixtures.

1. If a security agreement covers both personal and real property, a secured party may proceed:
 - a. Under this part as to the personal property without prejudicing any rights with respect to the real property; or
 - b. As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.
2. Subject to subsection 3, if a security agreement covers goods that are or become fixtures, a secured party may proceed:
 - a. Under this part; or
 - b. In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.
3. Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and

encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

4. A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

41-09-102. (9-605) Unknown debtor or secondary obligor. A secured party does not owe a duty based on its status as secured party:

1. To a person that is a debtor or obligor, unless the secured party knows:
 - a. That the person is a debtor or obligor;
 - b. The identity of the person; and
 - c. How to communicate with the person; or
2. To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - a. That the person is a debtor; and
 - b. The identity of the person.

41-09-103. (9-606) Time of default for agricultural lien. For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created or section 35-01-29.

41-09-104. (9-607) Collection and enforcement by secured party.

1. If so agreed, and in any event after default, a secured party:
 - a. May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
 - b. May take any proceeds to which the secured party is entitled under section 41-09-35;
 - c. May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

- a. A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under section 41-09-104 in the following order to:
 - (1) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
 - (2) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and
 - (3) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.
 - b. If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under subdivision c.
 - c. A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under section 41-09-104 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.
 - d. A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.
2. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

41-09-106. (9-609) Secured party's right to take possession after default.

1. After default a secured party:
 - a. May take possession of the collateral; and
 - b. Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 41-09-107.
2. A secured party may proceed under subsection 1:
 - a. Pursuant to judicial process; or
 - b. Without judicial process, if it proceeds without breach of the peace.
3. If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the

secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

41-09-107. (9-610) Disposition of collateral after default.

1. After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.
2. Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.
3. A secured party may purchase collateral:
 - a. At a public disposition; or
 - b. At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.
4. A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.
5. A secured party may disclaim or modify warranties under subsection 4:
 - a. In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or
 - b. By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.
6. A record is sufficient to disclaim warranties under subsection 5 if it indicates "there is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

41-09-108. (9-611) Notification before disposition of collateral.

1. In this section, "notification date" means the earlier of the date on which:
 - a. A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or
 - b. The debtor and any secondary obligor waive the right to notification.
2. Except as otherwise provided in subsection 4, a secured party that disposes of collateral under section 41-09-107 shall send to the persons specified in subsection 3 a reasonable authenticated notification of disposition.

3. To comply with subsection 2, the secured party shall send an authenticated notification of disposition to:
 - a. The debtor;
 - b. Any secondary obligor;
 - c. Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;
 - d. Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
 - (1) Identified the collateral;
 - (2) Was indexed under the debtor's name as of that date; and
 - (3) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and
 - e. Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in subsection 1 of section 41-09-31.
4. Subsection 2 does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.
5. A secured party complies with the requirements for notification prescribed by paragraph 2 of subdivision c of subsection 3 if:
 - a. Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in paragraph 2 of subdivision c of subsection 3; and
 - b. Before the notification date, the secured party:
 - (1) Did not receive a response to the request for information; or
 - (2) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

41-09-109. (9-612) Timeliness of notification before disposition of collateral.

1. Except as otherwise provided in subsection 2, whether a notification is sent within a reasonable time is a question of fact.

2. A notification of disposition sent after default and ten days before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

41-09-110. (9-613) Contents and form of notification before disposition of collateral - General.

1. The contents of a notification of disposition are sufficient if the notification:
 - a. Describes the debtor and the secured party;
 - b. Describes the collateral that is the subject of the intended disposition;
 - c. States the method of intended disposition;
 - d. States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
 - e. States the time and place of a public disposition or the time after which any other disposition is to be made.
2. Whether the contents of a notification that lacks any of the information specified in subsection 1 are nevertheless sufficient is a question of fact.
3. The contents of a notification providing substantially the information specified in subsection 1 are sufficient, even if the notification includes:
 - a. Information not specified by that subsection; or
 - b. Minor errors that are not seriously misleading.
4. A particular phrasing of the notification is not required.

41-09-111. (9-615) Application of proceeds of disposition - Liability for deficiency and right to surplus.

1. A secured party shall apply or pay over for application the cash proceeds of disposition under section 41-09-107 in the following order to:
 - a. The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
 - b. The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;
 - c. The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
 - (1) The secured party receives from the holder of the subordinate security interest or other lien an authenticated

holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

- a. Takes the cash proceeds free of the security interest or other lien;
- b. Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and
- c. Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

41-09-112. (9-617) Rights of transferee of collateral.

1. A secured party's disposition of collateral after default:
 - a. Transfers to a transferee for value all of the debtor's rights in the collateral;
 - b. Discharges the security interest under which the disposition is made; and
 - c. Discharges any subordinate security interest or other subordinate lien.
2. A transferee that acts in good faith takes free of the rights and interests described in subsection 1, even if the secured party fails to comply with this chapter or the requirements of any judicial proceeding.
3. If a transferee does not take free of the rights and interests described in subsection 1, the transferee takes the collateral subject to:
 - a. The debtor's rights in the collateral;
 - b. The security interest or agricultural lien under which the disposition is made; and
 - c. Any other security interest or other lien.

41-09-113. (9-618) Rights and duties of certain secondary obligors.

1. A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:
 - a. Receives an assignment of a secured obligation from the secured party;
 - b. Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
 - c. Is subrogated to the rights of a secured party with respect to collateral.
2. An assignment, transfer, or subrogation described in subsection 1:
 - a. Is not a disposition of collateral under section 41-09-107; and

- b. Relieves the secured party of further duties under this chapter.

41-09-114. (9-619) Transfer of record or legal title.

1. In this section, "transfer statement" means a record authenticated by a secured party stating:
 - a. That the debtor has defaulted in connection with an obligation secured by specified collateral;
 - b. That the secured party has exercised its postdefault remedies with respect to the collateral;
 - c. That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
 - d. The name and mailing address of the secured party, debtor, and transferee.
2. A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:
 - a. Accept the transfer statement;
 - b. Promptly amend its records to reflect the transfer; and
 - c. If applicable, issue a new appropriate certificate of title in the name of the transferee.
3. A transfer of the record or legal title to collateral to a secured party under subsection 2 or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties under this chapter.

41-09-115. (9-620) Acceptance of collateral in full or partial satisfaction of obligation - Compulsory disposition of collateral.

1. A secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:
 - a. The debtor consents to the acceptance under subsection 3;
 - b. The secured party does not receive, within the time set forth in subsection 4, a notification of objection to the proposal authenticated by:
 - (1) A person to which the secured party was required to send a proposal under section 41-09-116; or
 - (2) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

2. A purported or apparent acceptance of collateral under this section is ineffective unless:
 - a. The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and
 - b. The conditions of subsection 1 are met.
3. For purposes of this section:
 - a. A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and
 - b. A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:
 - (1) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;
 - (2) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and
 - (3) Does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.
4. To be effective under subdivision c of subsection 1, a notification of objection must be received by the secured party:
 - a. In the case of a person to which the proposal was sent pursuant to section 41-09-116, within twenty days after notification was sent to that person; and
 - b. In other cases:
 - (1) Within twenty days after the last notification was sent pursuant to section 41-09-116; or
 - (2) If a notification was not sent, before the debtor consents to the acceptance under subsection 3.

41-09-116. (9-621) Notification of proposal to accept collateral.

1. A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:
 - a. Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

- b. Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
 - (1) Identified the collateral;
 - (2) Was indexed under the debtor's name as of that date; and
 - (3) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and
 - c. Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in subsection 1 of section 41-09-31.
2. A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection 1.

41-09-117. (9-622) Effect of acceptance of collateral.

1. A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:
- a. Discharges the obligation to the extent consented to by the debtor;
 - b. Transfers to the secured party all of a debtor's rights in the collateral;
 - c. Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and
 - d. Terminates any other subordinate interest.
2. A subordinate interest is discharged or terminated under subsection 1, even if the secured party fails to comply with this chapter.

41-09-118. (9-623) Right to redeem collateral.

1. A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.
2. To redeem collateral, a person shall tender:
- a. Fulfillment of all obligations secured by the collateral; and
 - b. The reasonable expenses and attorney's fees described in subdivision a of subsection 1 of section 41-09-111.
3. A redemption may occur at any time before a secured party:
- a. Has collected collateral under section 41-09-104;

- b. Has disposed of collateral or entered into a contract for its disposition under section 41-09-107; or
- c. Has accepted collateral in full or partial satisfaction of the obligation it secures under section 41-09-117.

41-09-119. (9-624) Waiver.

1. A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 41-09-108 only by an agreement to that effect entered into and authenticated after default.
2. A debtor or secondary obligor may waive the right to redeem collateral under section 41-09-118 only by an agreement to that effect entered into and authenticated after default.

41-09-120. (9-625) Remedies for secured party's failure to comply with chapter.

1. If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.
2. Subject to subsections 3, 4, and 6, a person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply with a request under section 41-09-20 may include loss resulting from the debtor's inability to obtain, or increase costs of, alternative financing.
3. Except as otherwise provided in section 41-09-123:
 - a. A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover in an individual action damages under subsection 2 for its loss; and
 - b. If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover in an individual action for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.
4. A debtor whose deficiency is eliminated under section 41-09-121 may recover in an individual action damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 41-09-121 may not otherwise recover under subsection 2 for noncompliance with the provisions of sections 41-09-98 through 41-09-123 relating to collection, enforcement, disposition, or acceptance.
5. In addition to any damages recoverable under subsection 2, the debtor or person named as a debtor in a filed record, as applicable, may recover in an individual action one hundred dollars in each case from a person that:

- a. Fails to comply with section 41-09-18;
 - b. Fails to comply with section 41-09-19;
 - c. Files a record that the person is not entitled to file under subsection 1 of section 41-09-80; or
 - d. Fails to comply with section 41-09-84.
6. A debtor or consumer obligor may recover in an individual action damages under subsection 2 and, in addition, one hundred dollars in each case from a person that, without reasonable cause, fails to comply with a request under section 41-09-20. A recipient of a request under section 41-09-20 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.
7. If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 41-09-20, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

41-09-121. (9-626) Action in which deficiency or surplus is in issue. In an action arising from a transaction in which the amount of a deficiency or surplus is in issue, the following rules apply:

1. A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.
2. If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.
3. Except as otherwise provided in section 41-09-123, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:
 - a. The proceeds of the collection, enforcement, disposition, or acceptance; or
 - b. The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.
4. For purposes of subdivision b of subsection 3, the amount of proceeds that would have been realized is equal to the sum of the secured

obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

5. If a deficiency or surplus is calculated under subsection 6 of section 41-09-111, the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

41-09-122. (9-627) Determination of whether conduct was commercially reasonable.

1. The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.
2. A disposition of collateral is made in a commercially reasonable manner if the disposition is made:
 - a. In the usual manner on any recognized market;
 - b. At the price current in any recognized market at the time of the disposition; or
 - c. Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.
3. A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:
 - a. In a judicial proceeding;
 - b. By a bona fide creditors' committee;
 - c. By a representative of creditors; or
 - d. By an assignee for the benefit of creditors.
4. Approval under subsection 3 need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

41-09-123. (9-628) Nonliability and limitation on liability of secured party - Liability of secondary obligor.

1. Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

- a. The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this chapter; and
 - b. The secured party's failure to comply with this chapter does not affect the liability of the person for a deficiency.
2. A secured party is not liable because of its status as secured party:
 - a. To a person that is a debtor or obligor, unless the secured party knows:
 - (1) That the person is a debtor or obligor;
 - (2) The identity of the person; and
 - (3) How to communicate with the person; or
 - b. To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (1) That the person is a debtor; and
 - (2) The identity of the person.
3. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:
 - a. A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
 - b. An obligor's representation concerning the purpose for which a secured obligation was incurred.
4. A secured party is not liable under subdivision b of subsection 3 of section 41-09-120 more than once with respect to any one secured obligation.

41-09-124. (9-702) Savings clause.

1. Except as otherwise provided in this part, this Act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2001.
2. Except as otherwise provided in subsection 3 and sections 41-09-125 through 41-09-131:
 - a. Transactions and liens that were not governed by the former chapter 41-09 were validly entered into or created before July 1, 2001, and would be subject to this Act if they had been entered into or created on or after July 1, 2001, and the rights, duties, and

interests flowing from those transactions and liens remain valid after July 1, 2001; and

- b. The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this Act or by the law that otherwise would apply if this Act had not taken effect.
3. This Act does not affect an action, case, or proceeding commenced before July 1, 2001.

41-09-125. (9-703) Security interest perfected before effective date.

1. A security interest that is enforceable immediately before July 1, 2001, and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this Act if, on July 1, 2001, the applicable requirements for enforceability and perfection under this Act are satisfied without further action.
2. Except as otherwise provided in section 41-09-127, if, immediately before July 1, 2001, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this Act are not satisfied on July 1, 2001, the security interest:
 - a. Is a perfected security interest for one year after this Act takes effect;
 - b. Remains enforceable thereafter only if the security interest becomes enforceable under section 41-09-13 before the year expires; and
 - c. Remains perfected thereafter only if the applicable requirements for perfection under this Act are satisfied before the year expires.

41-09-126. (9-704) Security interest unperfected before effective date. A security interest that is enforceable immediately before July 1, 2001, but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

1. Remains an enforceable security interest until July 1, 2002;
2. Remains enforceable thereafter if the security interest becomes enforceable under section 41-09-13 on July 1, 2001, or within one year thereafter; and
3. Becomes perfected:
 - a. Without further action, on July 1, 2001, if the applicable requirements for perfection under this Act are satisfied before or at that time; or
 - b. When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

41-09-127. (9-705) Effectiveness of action taken before effective date.

1. If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under this Act by July 1, 2002. An attached security interest becomes unperfected on July 1, 2002, unless the security interest becomes a perfected security interest under this Act before the expiration of that period.
2. The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this Act.
3. This Act does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in the former section 41-09-03. However, except as otherwise provided in subsections 4 and 5 and section 41-09-128, the financing statement ceases to be effective at the earlier of:
 - a. The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
 - b. June 30, 2006.
4. The filing of a continuation statement after this Act takes effect does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.
5. Subdivision b of subsection 3 applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in the former section 41-09-03 only to the extent that part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.
6. A financing statement that includes a financing statement filed before July 1, 2001, takes effect and a continuation statement filed after July 1, 2001, is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

41-09-128. (9-706) When initial financing statement suffices to continue effectiveness of financing statement.

1. The filing of an initial financing statement in the office specified in section 41-09-72 continues the effectiveness of a financing statement filed before July 1, 2001, if:
 - a. The filing of an initial financing statement in that office would be effective to perfect a security interest under this Act;

2. a. Notwithstanding the provisions of ~~sections 41-09-23, 41-09-40, 41-09-41,~~ section 41-09-30 and ~~41-09-42~~ sections 41-09-72 through 41-09-97, all filings required under the Uniform Commercial Code in order to perfect a security interest against the personal property or fixtures of a debtor transmitting utility shall be made and maintained only in the office of the secretary of state of North Dakota.

SECTION 32. AMENDMENT. Section 54-09-08 of the 1999 Supplement to 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 ~~subsections 8 and 11~~ subsection 6 of section ~~41-09-42 and 41-09-94,~~ subsection 10 of section 54-09-04, and sections 34 and 35 of this Act. 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.

SECTION 33. Computerized central indexing system - Rules.

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 registers of deeds 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, 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 register of deeds' 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.
2. Within two working days of receipt of a financing statement, continuation statement, amendment, or termination statement filed pursuant to chapter 41-09 or a statement filed pursuant to section 35-13-02, 35-17-04, 35-20-16, 35-30-02, or 35-31-02, the register of deeds or secretary of state shall file the information contained in the statement in the computerized central indexing system. A computer printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement or lien. The secretary of state shall prescribe one form that can be used to perfect a security interest in farm products or gain protection under the central notice system, or both.
3. The secretary of state may adopt rules necessary to implement sections 33, 34, and 35 of this Act.

SECTION 34. Secretary of state to compile lists for crops and livestock - Distribution of lists.

1. From the computerized central indexing system, the secretary of state or a designee shall produce each month one list for crops and one list for livestock that each contain the information as filed on the forms pursuant to section 41-09-72. The secretary of state shall also include on the lists the information filed for crops and livestock pursuant to sections 35-17-04, 35-30-02, and 35-31-02. The lists must be in alphabetical order according to the last name of, or in numerical order according to the social security number of, the person engaged in farming operations. The lists may be prepared in categories according to county, regions as designated by the secretary of state, or on a statewide basis. If requested, the lists must be in printed form. Each list must conspicuously note the effective date of the list.
2. The secretary of state shall distribute monthly by mail the lists prepared pursuant to subsection 1, at least five business days in advance of the effective date of each of the lists. If requested, the secretary of state shall mail the lists to any person making a request at a fee as provided in section 35 of this Act.
3. Upon a verbal request of any person, the secretary of state, a designee of the secretary of state, or a register of deeds shall verbally provide information contained on a list generated through the computerized central indexing system if the collateral is crops or livestock. The requesting party may request a certificate from the secretary of state or the register of deeds and the secretary of state or the register of deeds shall confirm the information given. Direct computer access is equivalent to oral confirmation, and a computer printout constitutes the written confirmation of the secretary of state, if use of this method of confirmation does not cause the central indexing system to lose federal certification. A computer printout from the computerized central indexing system constitutes the certificate of the secretary of state or the register of deeds as to whether there is on file, on the date and hour stated on the computer printout, a financing statement.

SECTION 35. Fees.

1. The secretary of state shall establish fees for placing data in the computerized central indexing system; for obtaining computer access to the computerized central indexing system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base; for receiving printouts; for direct access to all or parts of the central indexing system; for lists sold or licensed under subsection 6 of section 41-09-94; for any other list provided by the secretary of state; for any programming charges specifically incurred to provide information requested by persons which is related to the central indexing system; and for other services provided through the computerized system.
2. The fee for furnishing information on a verbal request pursuant to subsection 3 of section 34 of this Act is seven dollars, and the fee for furnishing a certificate under subsection 3 of section 34 of this Act is seven dollars.
3. The secretary of state shall establish the fee for furnishing lists under subsection 1 of section 34 of this Act based on actual costs to produce the lists for distribution.

4. Fees collected by the secretary of state under subsections 1 and 3 and under subsection 6 of section 41-09-94 must be deposited in the secretary of state's general services operating fund. Fees collected by the secretary of state under subsection 2 must be deposited in the general fund in the state treasury.
5. The secretary of state may adopt rules regarding what portion of the filing fees and search fees collected by the register of deeds under section 41-09-96 must be submitted to the secretary of state for deposit into the secretary of state's general operating fund to meet the cost of the provision of services required under sections 33 and 34 of this Act.

SECTION 36. REPEAL. Chapter 41-09 of the North Dakota Century Code is repealed.

SECTION 37. APPROPRIATION. There is appropriated out of any moneys in the secretary of state's general services operating fund in the state treasury, not otherwise appropriated, the sum of \$21,000, or so much of the sum as may be necessary, to the secretary of state for the purpose of defraying the expenses of providing direct access to the central indexing system, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 5, 2001
Filed April 5, 2001

NUISANCES

CHAPTER 362

SENATE BILL NO. 2102

(Senator Lyson)
(Representative Carlisle)

DISORDERLY HOUSE AS PUBLIC NUISANCE

AN ACT to create and enact a new section to chapter 42-01 of the North Dakota Century Code, relating to the use of certain structures as a nuisance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 42-01 of the North Dakota Century Code is created and enacted as follows:

Disorderly house - Public nuisance. An owner or lessee, or both, of a house or building that is used in a manner that habitually disturbs the peace, comfort, or decency of the immediate neighborhood is guilty of maintaining a public nuisance. A lessee is not guilty of an offense under this section unless the lessee is the cause of the nuisance.

Approved April 17, 2001
Filed April 17, 2001

OCCUPATIONS AND PROFESSIONS

CHAPTER 363

HOUSE BILL NO. 1195

(Representative Klemin)

ABTRACTER FEES

AN ACT to amend and reenact section 43-01-18 of the North Dakota Century Code, relating to fees charged by abstracters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-01-18 of the North Dakota Century Code is amended and reenacted as follows:

43-01-18. Fees chargeable by abstracter. An abstracter may charge no more than the following fees; ~~and no more~~ for making and certifying to an abstract:

1. For each entry on an abstract or continuation thereof, ~~five~~ six dollars.
2. For a complete certification covering the records of the several county offices, ~~sixty~~ seventy-five dollars.
3. For a certification covering lands in excess of one quarter section [64.75 hectares] in the same abstract of title an additional fee of nine dollars, for each quarter section [64.75 hectares] or portion thereof in excess of one, may be charged.
4. For a certification covering premises in more than one block in any subdivision in the same abstract of title, an additional fee of nine dollars, for ~~such~~ the premises in each additional block in excess of one, may be charged.
5. For each name searched for judgments, real estate taxes, bankruptcy proceedings, federal tax liens, state tax liens, mechanics' liens and mechanics' lien notices, three dollars and fees charged to the abstracter by governmental agencies or governmental entities.
6. For all miscellaneous instruments, two dollars for the first one hundred words, and one dollar for each additional hundred words or fraction thereof.
7. ~~Such~~ The fees as may be fixed by special statute.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 364

HOUSE BILL NO. 1262

(Representatives Porter, Brusegaard, Delzer, Devlin)
(Senators Andrist, Cook)

BOARD OF PODIATRIC MEDICINE AND DISCIPLINARY PROCEEDINGS

AN ACT to create and enact a new section to chapter 43-05 of the North Dakota Century Code, relating to the cost of disciplinary proceedings undertaken by the state board of podiatric medicine; and to amend and reenact section 43-05-03 of the North Dakota Century Code, relating to the state board of podiatric medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-05-03 of the North Dakota Century Code is amended and reenacted as follows:

43-05-03. Board of podiatric medicine - Appointment of members - Term of office - Qualifications - Vacancies - Duties - Quorum - Records. The board of podiatric medicine consists of ~~five~~ six persons appointed by the governor for a term of four years each with the terms of office so arranged that ~~one term only expires~~ no more than two terms expire on the thirteenth day of June of ~~each~~ any year. A member of the board may not serve for more than two successive terms. A member may not be reappointed to the board after serving two successive terms unless at least two years have elapsed since the member last served on the board. Four members of the board must hold doctor of podiatric medicine degrees and must have practiced podiatric medicine in this state for at least two years before their appointment, ~~and the fifth person~~ one member must be a doctor of medicine, who holds a doctor of medicine degree and has practiced in this state for at least two years before the appointment, and one member, who is designated as a public member, must be a resident of this state, be at least twenty-one years of age, and may not be affiliated with any group or profession that provides or regulates health care in any form.

A member of the board shall qualify by taking the oath of office required of civil officers and shall hold office until a successor is appointed and qualified. The governor shall fill any vacancy by appointment for the unexpired term. The board may employ and compensate attorneys, investigative staff, clerical assistants, or others to assist in the performance of the duties of the board.

A majority of the board constitutes a quorum to transact business, make any determination, or take any action. The board shall keep a record of its proceedings and of applications for licenses. Applications and records must be preserved for at least six years beyond the disposition of the application or record or the last annual registration of the licensee, whichever is longer.

SECTION 2. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Costs of prosecution - Disciplinary proceedings. In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a podiatrist, the board may direct the podiatrist to pay the board a sum not to exceed the reasonable and actual costs, including attorney's fees, incurred by the board in the investigation and prosecution of the case. When applicable, the podiatrist's license may be suspended until the costs are paid to the board.

Approved April 3, 2001

Filed April 3, 2001

CHAPTER 365

HOUSE BILL NO. 1377

(Representatives Keiser, Berg, M. Klein)

BOARD OF PODIATRIC MEDICINE BORROWING

AN ACT to create and enact a new section to chapter 43-05 of the North Dakota Century Code, relating to the authority of the board of podiatric medicine to borrow funds; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-05 of the North Dakota Century Code is created and enacted as follows:

Loan for litigation expenses. Subject to approval by the emergency commission, the board may borrow funds sufficient to pay for attorneys' fees and costs incurred in investigations, administrative proceedings, and litigation resulting from the board performing its duties. Notwithstanding section 43-05-15, the board may establish an annual renewal license fee for each year following the issuance of a loan under this section, and the fee must be maintained until the loan is fully repaid, including any accrued interest. The amount of the annual renewal license fee assessed under this section may not exceed one thousand dollars. Once the loan is paid in full, the annual renewal license fee must revert to the amount established by the board before the issuance of the loan. The notice of a proposed rule to assess the fee in this section or revert to the previous license fee may be sent by certified mail to each individual licensed by the board in lieu of the publication requirements for the notice in chapter 28-32.

SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying during the 2001-02 interim the ability of occupational and professional boards with less than one hundred licensees to process disciplinary complaints and carry out other statutory responsibilities. The study should address procedures used by boards to respond to disciplinary complaints and initiate disciplinary actions, the boards' ability to pay for the cost of disciplinary actions, and the legal services and staff services available to assist boards with the processing of disciplinary complaints and the performance of other statutory responsibilities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 13, 2001

Filed April 13, 2001

CHAPTER 366

HOUSE BILL NO. 1138

(Industry, Business and Labor Committee)
(At the request of the Secretary of State)

CONTRACTOR LICENSES

AN ACT to amend and reenact section 43-07-04 of the North Dakota Century Code, relating to contractor licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-04 of the 1999 Supplement to 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 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 ~~use procedures of chapter 28-32 to revoke~~ 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.

Approved March 12, 2001

Filed March 12, 2001

CHAPTER 367

HOUSE BILL NO. 1424

(Representatives Koppelman, Carlson, Kasper, B. Thoreson)
(Senators Krebsbach, D. Mathern)

CONTRACTOR LICENSE RENEWAL

AN ACT to amend and reenact section 43-07-10 of the North Dakota Century Code, relating to licensing of contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-07-10. Renewal of license - Time requirements - Invalidity of license for failure to renew. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application, which includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of ~~ten~~ twenty-five thousand dollars, the nature of the work of each project, contract, or subcontract, and, if a performance bond was required, the name and address of the corporation, limited liability company, or other person who issued the bond. The registrar shall within a reasonable time forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of insurance indicating liability coverage as proof that the applicant has secured liability insurance unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes including North Dakota income tax, workers' compensation premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized. The application for a certificate of renewal must be made to the registrar on or before the first day of March of each year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of renewal by the March first deadline, the contractor's license is not in good standing and the contractor must be deemed to be unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty days after March first, the contractor must be notified by mail that the contractor's license is not in good standing. The contractor then has until June first to renew by paying a penalty fee of seventy-five percent of the renewal fee, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation authorized in section 43-07-09. After the June first deadline any licenses not renewed are revoked. Any application for a certificate of renewal must

be fully completed within sixty days of the date the application is received by the registrar or it will be returned to the contractor who will then be subject to the provisions of section 43-07-09.

Approved March 26, 2001

Filed March 26, 2001

CHAPTER 368

HOUSE BILL NO. 1126

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

PRE-NEED FUNERAL CONTRACT PAYMENT DEPOSIT

AN ACT to create and enact section 43-10.1-03.1 of the North Dakota Century Code, relating to pre-need funeral contracts; to amend and reenact sections 43-10.1-01, 43-10.1-03, 43-10.1-04, 43-10.1-05, and 43-10.1-07.1 of the North Dakota Century Code, relating to pre-need funeral contracts; and to repeal section 23-06-03.1 of the North Dakota Century Code, relating to pre-need funeral contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-01. Definitions. As used in this chapter:

1. "Cemetery association" means any person, corporation, municipality, association, or organization owning, conducting, or maintaining a cemetery or plot for the burial of dead human bodies.
2. "Cemetery merchandise" means all service or property to be used in funeral services or burials other than "professional service or personal property to be used in funeral services" ~~as defined in subsection 3.~~
3. "Commissioner" means the securities commissioner.
4. 5. "Person" means any natural person, firm, association, corporation, limited liability company, or agents or employees thereof.
5. 6. "Pre-need funeral service contract" means any contract, other than an insurance contract, under which for a specified consideration paid in advance in a lump sum or by installments, a person promises, upon the death of a beneficiary named or implied in the contract, to furnish professional service or personal property to be used in funeral services, or to furnish cemetery merchandise.
6. 7. "Professional service or personal property to be used in funeral services" means all personal property, services, supplies, and equipment normally performed or furnished by a licensed embalmer, a licensed funeral establishment, or a cemetery association including any inside interment receptacles or containers into which a dead human remains may be directly placed, caskets, crypt beds, catafalques, and all other articles of merchandise incident to a funeral service, but excluding any outside interment receptacles into which any inside receptacle or

container will be placed, grave lots, grave spaces, grave markers, monuments, tombstones, crypts, niches, and mausoleums unless these items are sold by a companion agreement or in contemplation of a trade or barter which includes the sale or rental of any inside interment receptacles or containers into which a dead human remains may be directly placed, caskets, crypt beds, catafalques, or other articles of merchandise incident to a funeral service.

SECTION 2. AMENDMENT. Section 43-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-03. Annual report filed with securities commissioner. On or before January thirty-first of each year, the owner or manager of each cemetery association or licensed funeral establishment that has entered into any pre-need funeral service contracts during the preceding calendar year shall file a report covering the period of the preceding calendar year with the ~~securities~~ commissioner, which report must include:

1. The name and address of the licensed funeral establishment or cemetery association and the name and address of the manager or operator thereof.
2. The name of the purchaser and beneficiary of each pre-need funeral service contract entered into on behalf of the licensed funeral establishment or cemetery association during the preceding calendar year and the date each contract was made.
3. The lump-sum consideration paid upon such pre-need funeral service contract required to be reported under subsection 2 or the total amount in dollars of any installments paid upon each pre-need funeral service contract required to be reported under subsection 2.
4. The name and address of the bank, credit union, savings and loan association, or trust company in which such consideration was deposited in accordance with section ~~23-06-03.1~~ 43-10.1-03.1.
5. The total in dollars of all sums received as consideration upon pre-need funeral service contracts executed by the licensed funeral establishment or cemetery association or in its behalf during all periods after July 1, 1973, which are undrawn or unexpended and on deposit in a bank, credit union, savings and loan association, or trust company or in the hands of the licensed funeral establishment or cemetery association.
6. Such other information as may reasonably be required by the ~~securities~~ commissioner for the purpose of the proper administration of this chapter.

Such report must be accompanied by a filing fee of fifteen dollars and is a public record.

¹⁸¹ **SECTION 3.** Section 43-10.1-03.1 of the North Dakota Century Code is created and enacted as follows:

43-10.1-03.1. Payments on pre-need funeral contracts to be deposited - Depository shall keep record of deposit - Personal property storage. Whenever payments are made to a person upon pre-need funeral service contracts, one hundred percent of the funds collected under the contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under the contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company in this state or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. The deposit must be placed in a federal deposit insurance corporation or national credit union administration insured certificate of deposit or negotiable debt obligation of the United States government. Payments received from the sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by a licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not the sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making the payment, before the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the payment.

A bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state.

SECTION 4. AMENDMENT. Section 43-10.1-04 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-04. Bond. ~~The~~ Each owner or operator of a licensed funeral establishment or cemetery association ~~shall, at the time of filing the annual report required in section 43-10.1-03,~~ who files an annual report, must file with the ~~securities~~ commissioner a corporate surety bond approved by the ~~securities~~ commissioner in an amount deemed adequate by the ~~securities~~ commissioner

¹⁸¹ Section 43-10.1-03.1 was amended by section 2 of Senate Bill No. 2314, chapter 370.

running to the state of North Dakota. The bond must be ~~payable to the state of North Dakota, and~~ in such form and style as the ~~securities~~ commissioner may require for the use and benefit of the purchasers or persons making payments upon pre-need funeral service contracts or their estates, or the beneficiary of the pre-need funeral service contract or his estate for damages suffered by them because of the failure to comply with all provisions of the pre-need funeral service contract or the provisions of this chapter.

SECTION 5. AMENDMENT. Section 43-10.1-05 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-05. Verification by ~~securities~~ commissioner. Within ninety days after the filing of a report as required by section 43-10.1-03, the ~~securities~~ commissioner shall verify such report by mailing to the banks, credit unions, savings and loan associations, or trust companies where the report indicates the consideration has been deposited, a questionnaire which the bank, credit union, savings and loan association, or trust company is requested to complete and return, verifying the facts stated in the report in regard to the contract or the deposit of funds. The ~~securities~~ commissioner shall verify the facts on additional contracts reported if the commissioner has reason to believe additional verification to be necessary.

SECTION 6. AMENDMENT. Section 43-10.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-07.1. Administration. The ~~securities~~ commissioner has the power to promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the ~~securities~~ commissioner has additional powers as set forth in this chapter.

SECTION 7. REPEAL. Section 23-06-03.1 of the North Dakota Century Code is repealed.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 369

SENATE BILL NO. 2443

(Senators O'Connell, Kroepflin, Schobinger)
(Representatives Hunskor, S. Kelsh, Kerzman)

PRE-NEED FUNERAL CONTRACTS

AN ACT to amend and reenact sections 23-06-03 and 43-10.1-02 of the North Dakota Century Code, relating to pre-need funeral service contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06-03. Duty of burial.

1. The duty of burying the body of a deceased person devolves upon ~~the following persons:~~
- ~~1.~~ If ~~the deceased was married,~~ upon the surviving husband or wife.
- ~~2.~~ 1. If ~~if the deceased was married or,~~ if the deceased was not married but left kindred, upon the person or persons in the same degree, of adult age, nearest of kin to the deceased and possessed of sufficient means to defray the necessary expenses.
- ~~3.~~ 2. If the person who has the duty of burial does not bury the body within the time required by this chapter, the person next specified shall bury the body.
- ~~4.~~ 3. If the deceased is not survived by a person described by subsection 1 ~~or 2~~ and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for county general assistance purposes or, if residence cannot be established, ~~then~~ the county social service board of the county in which the death occurs, shall employ some person to arrange for and supervise the burial or cremation. If the deceased was a resident or inmate of a public institution, the county in which the deceased was a resident for county general assistance purposes immediately before entering the institution shall employ a person to arrange for and supervise the burial or cremation. Each board of county commissioners may negotiate with the interested funeral directors or funeral homes regarding cremation expenses and burial expenses, but the total charges for burial services, including transportation of the deceased to the place of burial, the grave box or vault, grave space, and grave opening and closing expenses, may not be less than one thousand five hundred dollars. The county social service board shall pay the charge for funeral expenses as negotiated by the board of county commissioners, less any amount left by the deceased to defray the expenses.

4. A person with the duty of burial under this section, or the personal representative of the decedent's estate, if any, shall honor, to the extent reasonable and possible, any pre-need funeral arrangements a deceased articulated and funded in a pre-need funeral service contract.

SECTION 2. AMENDMENT. Section 43-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-02. Pre-need funeral service contracts. ~~No~~ A person may ~~not~~ engage in the sale or execution of a pre-need funeral service contract unless ~~such~~ that person is the operator, agent, employee, or manager of a licensed funeral establishment, a or cemetery association, or an agent or employee of such operator, manager, establishment, or association. As part of the sale of a pre-need funeral service contract, the seller shall inform the purchaser of the extent to which the person with the duty of burial under section 23-06-03 might be bound by any pre-need funeral arrangements.

Approved April 12, 2001
Filed April 12, 2001

CHAPTER 370

SENATE BILL NO. 2314

(Senators Stenehjem, Bowman, Dever)
(Representatives Nelson, Weiler)

PRE-NEED FUNERAL CONTRACT IRREVOCABILITY

AN ACT to amend and reenact section 23-06-03.1 of the North Dakota Century Code, or in the alternative to amend and reenact section 43-10.1-03.1 of the North Dakota Century Code as created by section 3 of House Bill No. 1126, as approved by the fifty-seventh legislative assembly, relating to pre-need funeral contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1126 does not become effective, section 23-06-03.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-06-03.1. Payments on pre-need funeral contracts to be deposited - Depository shall keep record of deposit - Personal property storage - Penalty. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under such contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under such contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. Payments received from any sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by any licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not such sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making the payment, ~~prior to~~ before the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the payment. Upon written request, however, a purchaser of a pre-need funeral service contract may make a certain amount of the pre-need funds irrevocable. The irrevocable amount may not exceed the amount of the allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered. A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral

establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction which agrees to accept the obligations.

Any bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state.

Any person who willfully violates this section or any rule or order of the commissioner under this section is guilty of a class C felony. Each violative act constitutes a separate offense and a prosecution or conviction of any one offense does not bar a prosecution or conviction for any other offense.

¹⁸² **SECTION 2. AMENDMENT.** If House Bill No. 1126 becomes effective, section 43-10.1-03.1 of the North Dakota Century Code, as created by section 3 of House Bill No. 1126, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

43-10.1-03.1. Payments on pre-need funeral contracts to be deposited - Depository shall keep record of deposit - Personal property storage. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under the contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under the contracts for the sale of cemetery merchandise must be deposited in or transferred to a trust company in this state or to a federally insured bank, credit union, or savings and loan association in this state, within ten days. The deposit must be placed in a federal deposit insurance corporation or national credit union administration insured certificate of deposit or negotiable debt obligation of the United States government. Payments received from the sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by a licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not the sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death must be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. The funds may be released or transferred by the bank, credit union, savings and loan association, or trust company to the person making the payment, before the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor or transferor at the request of the person making the

¹⁸² Section 43-10.1-03.1 was created by section 3 of House Bill No. 1126, chapter 368.

payment. Upon written request, however, a purchaser of a pre-need funeral service contract may make a certain amount of the pre-need funds irrevocable. The irrevocable amount may not exceed the amount of the allowable asset exclusion used for determining eligibility for medical assistance under section 50-24.1-02.3 at the time the contract is entered. A purchaser of a pre-need funeral service contract has forty-five days from entering the contract to cancel the irrevocable part of the contract by giving notice to the cemetery association or licensed funeral establishment with whom the contract was entered. Any pre-need funeral service contract held by a cemetery association or a licensed funeral establishment must be fully transferable to another cemetery association or funeral establishment licensed under chapter 43-10 or a substantially similar law of another jurisdiction which agrees to accept the obligations.

A bank, credit union, savings and loan association, or trust company receiving such a deposit or transfer shall keep a complete record of the deposit or transfer, showing the name of the depositor or transferor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within this state.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 371

SENATE BILL NO. 2371 (Senators Espegard, Lee) (Representatives Kasper, Nottestad)

COSMETOLOGY PRACTICE AND INSTRUCTION

AN ACT to amend and reenact sections 43-11-01, 43-11-16, and subdivisions b and c of subsection 1 of section 43-11-27 of the North Dakota Century Code, relating to skin care, cosmetology schools, and cosmetology instructors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-11-01. Definitions. In this chapter, unless the context or subject matter ~~thereof~~ otherwise requires:

1. "Board" means the state board of cosmetology.
2. "Cosmetology" means any one or combination of practices generally and usually ~~heretofore and hereafter~~ performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding ~~him or herself~~ oneself 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 is ~~defined and~~ includes, ~~but otherwise is not limited thereby,~~ the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work on the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring the nails of any person.
3. "Cosmetology salon" includes that part of any building ~~wherein~~ in which the occupation of a cosmetologist is practiced.
4. "Esthetician" means a person who is licensed by the board to engage in the practice of skin care. An esthetician does not include a professional make-up artist trained in facial make-up application by a cosmetics company.
5. "Homebound" means any person who is ill, disabled, or otherwise unable to travel to a salon.
6. "Instructor" means any person of the age of eighteen years or more, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who

has met the requirements of section 43-11-27 and has applied for and received an instructor's license.

7. "Invasive care" means any procedure that invades the live tissue of the dermis, including:
 - a. Laser use, except the use of cold laser technology using nonlinear, pulsed light application for the purpose of biostimulation without the generation of heat; and
 - b. Chemical peels, except for chemical peels using:
 - (1) Thirty percent alpha hydroxy acid, which includes glycolic acid with a pH of 3.0 or higher;
 - (2) Twenty percent beta hydroxy acid, which includes salicylic acid with a pH of 3.0 or higher; or
 - (3) Two percent resorcinol with a pH of 3.0 or higher.
- ~~8.~~ 9. "Manager-operator" means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
- ~~9.~~ 10. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.
- ~~10.~~ 11. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.
- ~~11.~~ 12. "Operator" means a person, not a student, who is licensed under the provisions of this chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.
- ~~12.~~ 13. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
- ~~13.~~ 14. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, 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.
- ~~14.~~ 15. "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.
- ~~15.~~ 16. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.
- ~~16.~~ 17. "Tuition" means the total cost of a person's cosmetology studies, and does not include books or demonstration kits.

SECTION 2. AMENDMENT. Section 43-11-16 of the North Dakota Century Code is amended and reenacted as follows:

43-11-16. Schools of cosmetology - Qualifications for licensure. A license must be granted to a school of cosmetology upon an application to the board and the payment of the annual license fee, if the school:

1. Is operated and maintained in premises separate from any cosmetology salon;
2. Requires one thousand eight hundred hours of training and instruction in cosmetology, six hundred hours of training and instruction in esthetics, or three hundred fifty hours of training and instruction in manicure, not to exceed eight hours per day;
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 after the school's enrollment has reached fifty students, 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;
4. Possesses apparatus and equipment sufficient for the proper and full teaching of all subjects of its curriculum;
5. Maintains a record of the attendance and performance of each student;
6. Maintains regular class and instruction hours to include practical demonstrations and theoretical studies supplemented by audiovisual aids, and studies in sanitation, sterilization, and other safety measures and the use of antiseptics, cosmetics, and electrical appliances consistent with the practical and theoretical requirements as applicable to cosmetology;
7. Agrees not to:
 - a. Conduct a clinical department for fees after licensure by the board, until the school has been operating for a period of at least twenty percent of the total hours of instruction required by this chapter;
 - b. Permit any student to practice on any person not an instructor or registered student of the school until the student has completed at least twenty percent of the total hours of instruction required by this chapter;
 - c. Compensate any of its basic students in any way; and
8. At the time of application for licensure and upon the renewal of a license, furnishes to the board, and maintains in force at all times the license is in effect, a bond in the penal sum of ten thousand dollars. The bond must run in favor of the board, as agent of the state, and must be furnished by a surety company authorized to do business in this state. It must be conditioned upon the bonded school's providing its registered students with the full course of instruction required under this chapter

and must provide for a refund of a proportionate amount of each student's tuition fee upon default.

Any school that enrolls student instructors shall set up an adequate course of training, with the approval of the board, and may not have at any one time more than ~~one~~ two student ~~instructor~~ instructors for each licensed instructor actively engaged in the school.

SECTION 3. AMENDMENT. Subdivisions b and c of subsection 1 of section 43-11-27 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- b. Shall ~~have at least one year's experience as an active practicing cosmetologist~~ possess a current North Dakota license as a cosmetologist and must have been actively engaged in the practice of cosmetology for at least one year before application for an instructor's license, supplemented by not less than four hundred eighty hours instructor's training in cosmetology in a school of cosmetology. In no event may more than six hundred hours instructor's training be requisite for admission for examination under this subdivision or course of training approved by the board;
or
- c. Shall possess a current North Dakota license as a cosmetologist and shall have been actively engaged in the practice of cosmetology for at least three years prior to application for an instructor's license supplemented by not less than one hundred sixty hours instructor's training in ~~cosmetology in~~ cosmetology or course of training approved by the board. In no event may more than six hundred hours instructor's training be requisite for admission for examination under this subdivision. No instructor or student instructor may be permitted to practice cosmetology on a patron other than that part of practical work which pertains directly to the teaching of practical operations to students.

Approved April 12, 2001
Filed April 12, 2001

CHAPTER 372

SENATE BILL NO. 2114

(Industry, Business and Labor Committee)
(At the request of the Board of Nursing)

NURSING PRACTICE

AN ACT to amend and reenact sections 43-12.1-02, 43-12.1-03, 43-12.1-04, 43-12.1-05, 43-12.1-07, 43-12.1-08, 43-12.1-09, 43-12.1-10, 43-12.1-11, 43-12.1-13, 43-12.1-14, 43-12.1-15, and 43-12.1-16 of the North Dakota Century Code, relating to specialty nursing practice, unlicensed assistive personnel, persons exempt from licensure, residency requirements for nursing practice, compensation of board members, disciplinary procedures, and the expiration date of the authority of a licensed nurse to delegate medication administration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-02 of the 1999 Supplement to 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 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 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 currently licensed as an advanced practice registered nurse, registered nurse, or licensed practical nurse.
5. ~~"Nurse assistant" means a person who is authorized by the board to perform nursing tasks delegated and supervised by a licensed nurse.~~
6. "Nursing" means the performance of acts utilizing specialized knowledge, skills, and abilities for people in a variety of settings. Nursing 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 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.
7. 6. "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist.
8. 7. "Registered nurse" means a person 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 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.
11. "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.

SECTION 2. AMENDMENT. Section 43-12.1-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-03. License required - Title - Abbreviation. Any person who provides nursing care to a resident of this state must hold a current license or registration issued by the board. It is unlawful for a person to practice nursing, offer to practice nursing, assist in the practice of nursing, or use any title, abbreviation, or designation to indicate that the person is practicing nursing or assisting in the practice of nursing in this state unless that person is currently licensed or registered under this chapter. A currently licensed advanced practice registered nurse or specialty practice registered nurse may use titles approved by the board; a currently

licensed registered nurse may use the abbreviation "R.N."; a currently licensed practical nurse may use the abbreviation "L.P.N."; and ~~a nurse assistant~~ an unlicensed assistive person with current registration may use the title identified by the employer. A person may not use the title "nurse" or be referred to as a "nurse" unless licensed by the board.

SECTION 3. AMENDMENT. Section 43-12.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-04. (Effective through July 31, 2001) Persons exempt from provisions of chapter. This chapter does not apply to:

1. Persons who perform nursing ~~tasks~~ interventions in cases of emergency or disaster.
2. Students practicing nursing as a part of a board-approved nursing education program.
3. Legally licensed nurses of another state employed in this state by the United States government or any of its bureaus, divisions, or agencies.
4. A nurse licensed by another state or Canada, whose employment requires the nurse to accompany and care for a patient in transit for health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. A person who performs nursing tasks for a family member.
7. A person who is not licensed under this chapter and who renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person who provides medication administration according to individual needs and as a part of an individual habilitation or case plan within a residential treatment center for children licensed under chapter 25-03.2, a treatment or care center for developmentally disabled persons licensed under chapter 25-16, or a residential child care facility licensed under chapter 50-11.

(Effective after July 31, 2001) Persons exempt from provisions of chapter. This chapter does not apply to:

1. Persons who perform nursing ~~tasks~~ interventions in cases of emergency or disaster.
2. Students practicing nursing as a part of a board-approved nursing education program.
3. Legally licensed nurses of another state employed in this state by the United States government or any of its bureaus, divisions, or agencies.

4. A nurse licensed by another state or Canada, whose employment requires the nurse to accompany and care for a patient in transit for health care.
5. A nurse licensed by another state whose employment by a resident of that state requires the nurse to accompany and care for the resident in North Dakota.
6. A person who performs nursing tasks for a family member.
7. A person who is not licensed under this chapter and who renders assistance pursuant to chapter 23-27.
8. A person licensed or registered under this title and carrying out the therapy or practice for which the person is licensed or registered.
9. A person who provides medications, other than by the parenteral route:
 - a. Within residential treatment centers for children licensed under chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;
 - b. Within treatment or care centers for developmentally disabled persons licensed under chapter 25-16;
 - c. Within group homes, residential child care facilities, and adult foster care facilities licensed under section 50-11-01 or North Dakota Administrative Code chapter 75-03-16; or
 - d. Within human service centers licensed under chapter 50-06.
10. A nurse currently licensed to practice nursing by another jurisdiction:
 - a. Whose practice in another state requires that nurse to attend orientation, meetings, or continuing education in North Dakota;
 - b. Who serves as a guest lecturer or short-term consultant; or
 - c. Who provides evaluation undertaken on behalf of an accrediting organization.

SECTION 4. AMENDMENT. Section 43-12.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-05. Board of nursing - Composition - Term of office. There is a state board of nursing whose members must be appointed by the governor which must consist of five registered nurses, three licensed practical nurses, and one public member. Each board member must be appointed for a term of four years. No appointee may be appointed for more than two consecutive terms. An appointment for an unexpired term of more than eighteen months will constitute a full term. Terms of nurse board members must be evenly distributed to allow two licensed nurse board members to be appointed or reappointed each year. ~~The members of the board holding office on August 1, 1995, may continue to serve as members for their respective terms.~~

SECTION 5. AMENDMENT. Section 43-12.1-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-07. Compensation of board members. ~~In addition to the expenses incurred while engaged in the performance of the duties of office, each board member shall receive a per diem fee not to exceed ninety dollars for each day of service.~~ A member of the board is entitled to receive compensation in an amount fixed by the board for each day or portion of a day the member is actually engaged in the performance of official duties and such mileage reimbursement as is provided for in section 54-06-09. In addition, the member is entitled to reimbursement for actual and necessary expenses in the amounts provided by law for state officers in section 44-08-04. All funds collected or received by the board must be deposited and disbursed in accordance with section 54-44-12.

SECTION 6. AMENDMENT. Section 43-12.1-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-08. Powers and duties of the board. The board shall regulate the practice of nursing to assure that qualified competent practitioners and high quality standards are available. Regulation of the profession of nursing must ensure that no person may practice or offer to practice nursing or use titles of advanced practice registered nurse, specialty practice registered nurse, registered nurse, licensed practical nurse, ~~nurse assistant~~ 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. The board shall:

1. 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. Adopt rules necessary to administer this chapter.
3. Appoint and employ a qualified registered nurse to serve as executive director and approve any additional staff positions necessary to administer this chapter.
4. 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. Collect and analyze data regarding nursing education, nursing practice, and nursing resources.
11. Issue limited licenses to individuals requiring accommodation to practice nursing.
12. Establish confidential programs for the rehabilitation of nurses with workplace impairments.
13. Discipline applicants, licensees, and registrants for violating this chapter.
14. Establish a nursing student loan program funded by license fees to encourage persons to enter and advance in the nursing profession.
15. Establish a registry of persons licensed or registered by the board.
16. 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.
17. Report annually to the governor and nursing profession regarding the regulation of nursing in the state.
18. Conduct and support projects pertaining to nursing education and practice.
19. 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. Adopt rules to allow nurses licensed by another state to receive short-term clinical education in North Dakota health care facilities.

SECTION 7. AMENDMENT. Section 43-12.1-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-09. Licensure - Registration. Each applicant who successfully meets the requirements of this section is entitled to initial licensure or registration as follows:

1. An applicant for licensure by examination to practice as a registered nurse or licensed practical nurse shall:
 - a. Submit a completed application and appropriate fee as established by the board;
 - b. Submit an official transcript showing completion of a board-approved nursing education program preparing for the level of licensure sought; and

- c. Pass an examination approved by the board.
2. An applicant for licensure by endorsement to practice as a registered nurse or licensed practical nurse shall:
 - a. Submit a completed application and appropriate fee as established by the board;
 - b. 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;
 - c. Submit proof of initial licensure by examination with the examination meeting the state requirements for licensure examinations in effect at the time the applicant qualified for initial licensure; and
 - d. 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 ~~educational~~ academic requirements or thirty hours of continuing education.
4. An applicant for licensure as an advanced practice registered nurse shall:
 - a. Submit a completed application and appropriate fee as established by the board;
 - b. 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
 - c. Possess or show evidence of application for a current unencumbered registered nurse license.
5. 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 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. An applicant for ~~nurse assistant~~ unlicensed assistive person registration shall:

- a. Submit a completed application and the appropriate fee as established by the board; and
 - b. Provide verification of appropriate training ~~and~~, evidence of certification or evaluation in the performance of basic nursing ~~tasks~~ interventions.
7. An applicant for licensure as a specialty practice registered nurse shall:
- a. Submit a completed application and appropriate fees as established by the board;
 - b. 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
 - c. Possess or show evidence of application for a current unencumbered registered nurse license.

SECTION 8. AMENDMENT. Section 43-12.1-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-10. License - Registration - Renewal.

1. 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 the applicant meets all requirements for licensure ~~and is a resident of North Dakota or upon verification of employment in North Dakota or by a federal agency~~. If a person does not renew a license before its expiration date, the license may be reinstated if that person meets the requirements set by the board.
2. ~~A nurse assistant~~ An unlicensed assistive person may renew registration upon submission of a renewal application, appropriate fee established by the board and documentation of competency by the employer or evidence of certification or evaluation. A lapsed ~~nurse assistant~~ unlicensed assistive person registration may be renewed 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 9. AMENDMENT. Section 43-12.1-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-11. Duties of licensees and registrants. Each person licensed or registered by the board shall provide information requested by the board at the time of renewal. Each person 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 ~~licensed nurse~~ 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 10. AMENDMENT. Section 43-12.1-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-13. Disciplinary proceedings. Disciplinary proceedings under this chapter must be conducted in accordance with chapter 28-32. Fees of ~~up to one thousand dollars for each separate violation~~ or the assessment of costs and disbursements, or both, may be imposed against a respondent in addition to any licensure or registration sanctions the board may impose. An appeal from the final decision of the board may be taken to the district court of Burleigh County under chapter 28-32. The board shall furnish to the boards of nursing of other states by means including the data bank of the national council of state boards of nursing, to data banks as required by federal law and to health care agencies of this state, a list of the names and addresses of licensees or registrants who have been disciplined by the board.

SECTION 11. AMENDMENT. Section 43-12.1-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-14. Grounds for discipline - Penalties. The board may ~~suspend, revoke, place on probation, refuse to issue or renew a license, or reprimand a licensee or registrant if the licensee or registrant~~ deny, limit, revoke, encumber, or suspend any license or registration to practice nursing issued by the board or applied for in accordance with this chapter; reprimand, place on probation, or otherwise discipline a licensee, registrant, or applicant; deny admission to licensure or registration examination; provide an alternative to discipline in situations involving impairments of chemical dependency or psychiatric or physical disorders; or require evidence of evaluation and treatment, upon proof that the person:

1. Has been arrested, charged, or convicted by a court, or has entered a plea of nolo contendere to a crime in any jurisdiction that relates adversely to the practice of nursing and the licensee or registrant has not demonstrated sufficient rehabilitation under section 12.1-33-02.1;
2. Has been disciplined by a board of nursing in another jurisdiction, or has had a license or registration to practice nursing or to assist in the practice of nursing or to practice in another health care occupation or profession denied, revoked, suspended, or otherwise restricted sanctioned;
3. Has engaged in any practice inconsistent with the standards of nursing practice;
4. Has obtained or attempted to obtain by fraud or deceit a license or registration to practice nursing, or has submitted to the board any information that is fraudulent, deceitful, or false;
5. ~~Is unfit or incompetent to practice nursing by reason of negligence, patterns of behavior, or other causes as established under rules adopted by the board~~ Has engaged in a pattern of practice or other behavior that demonstrates professional misconduct;
6. Has diverted or attempted to divert supplies, equipment, drugs or controlled substances for personal use or unauthorized use;

7. Has practiced nursing in this state without a current license or as otherwise prohibited by this chapter;
8. Has failed to report any violation of this chapter or rules adopted under this chapter; or
9. Has failed to ~~meet the duties of a licensee or registrant under this chapter~~ observe and follow the duly adopted standards, policies, directives, and orders of the board, or has violated any other provision of this chapter.

SECTION 12. AMENDMENT. Section 43-12.1-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-15. Violation - Penalties. A person may not:

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 might enable a person 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 through use of a transcript from a school of nursing, diploma, certificate of registration, license, or record which 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 as defined by this chapter unless licensed to do so.
5. Conduct any education program preparing a person 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 ~~tasks~~ interventions unless the person is licensed or registered by the board.

Any violation of this chapter is a class B misdemeanor.

SECTION 13. AMENDMENT. Section 43-12.1-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-12.1-16. (~~Effective through July 31, 2001~~) Delegation of medication administration. A licensed nurse may delegate medication administration to a person exempt under subsection 9 of section 43-12.1-04.

Approved April 12, 2001
Filed April 12, 2001

CHAPTER 373

HOUSE BILL NO. 1360

(Representatives Jensen, Gulleson, Keiser, F. Klein)
(Senators Kilzer, T. Mathern)

NURSING NEEDS STUDY

AN ACT to create and enact a new section to chapter 43-12.1 of the North Dakota Century Code, relating to a study of nursing needs; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Nursing needs study. The board may address issues of supply and demand for nurses, including issues of recruitment, retention, and utilization of nurses. The board:

1. May develop a strategic statewide plan to alleviate the nursing shortage in the state by establishing and maintaining a data base on nursing supply and demand in the state, including current supply and demand and future projections, and by selecting priorities from the plan to be addressed.
2. May convene various groups representative of nurses, other health care providers, business and industry, consumers, legislators, and educators to review and comment on data analysis prepared for the board; recommend systematic changes, including strategies for implementation of recommended changes; and evaluate and report the results of these efforts to the legislative assembly and the public.
3. May review and study the nursing educational requirements in this state.
4. May study the nursing shortage in this state and the implications for rural communities.
5. May increase any license or registration fees imposed by the board up to fifteen dollars to reimburse the board for actual expenses incurred under this section.
6. May apply for, solicit, accept, and expend any contribution, grant, or gift made available from public or private sources for the purpose of implementing this section.
7. Shall report annually on the progress of the study, if undertaken, to the legislative council and shall provide a final report to the sixtieth legislative assembly.

SECTION 2. EXPIRATION DATE. This Act is effective through September 30, 2006, and after that date is ineffective.

Approved April 3, 2001
Filed April 3, 2001

CHAPTER 374

SENATE BILL NO. 2199

(Senators Klein, D. Mathern)
(Representatives Delmore, R. Kelsch)

OPTOMETRIST GLAUCOMA TREATMENT

AN ACT to amend and reenact section 43-13-13.3 of the North Dakota Century Code, relating to optometrist treatment of primary open-angle glaucoma.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-13.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-13-13.3. Standard of care - When consultation with physician required.

1. An optometrist certified by the board in the use of pharmaceutical agents as provided in this chapter must be held to the same standard of care in the use of such agents as are physicians licensed by the state board of medical examiners.
2. Any optometrist authorized by the board to use pharmaceutical agents ~~must~~ shall consult with a physician duly licensed to practice medicine when any diseased or pathological conditions of the eye do not respond to treatment. The consultation must be documented in the patient's record.
3. ~~After initiating treatment for primary open-angle glaucoma, the therapeutically certified optometrist shall consult with a licensed ophthalmologist within seventy-two hours. A treatment plan for each individual patient must be cooperatively identified in accordance with the currently accepted standard of care. In treating and managing glaucoma, if no progress is achieved in realizing the selected range of pressure considered unlikely to cause further optic nerve damage or resulting in further visual field loss, a referral must be made to a licensed ophthalmologist without delay.~~

Approved March 15, 2001
Filed March 15, 2001

CHAPTER 375

SENATE BILL NO. 2350

(Senators Fischer, Flakoll, T. Mathern)
(Representatives Froelich, S. Kelsh, B. Thoreson)

PHARMACIST DRUG ADMINISTRATION

AN ACT to create and enact a new section to chapter 43-15 of the North Dakota Century Code, relating to pharmacist administration of drugs; and to amend and reenact subsection 1 of section 43-15-01 of the North Dakota Century Code, relating to terms used by the board of pharmacy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸³ **SECTION 1. AMENDMENT.** Subsection 1 of section 43-15-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Administration" means the direct application of a drug to the body of a patient.
 - a. The term includes ~~the~~:
 - (1) The emergency maintenance of a drug delivery device used in home infusion therapy by a qualified home pharmacist when nursing service is not available; ;
 - (2) Immunization and vaccination by injection of an individual who is more than eighteen years of age, upon an order by a physician or nurse practitioner authorized to prescribe such a drug or by written protocol with a physician or nurse practitioner; and
 - (3) Provision of drugs by subcutaneous, intradermal, and intramuscular injection to an individual who is more than eighteen years of age upon the order of a physician or nurse practitioner authorized to prescribe such a drug.
 - b. The term ~~excludes~~ does not include the regular ongoing delivery of a drug to the patient in a health care setting and other parenteral administration of a drug.

SECTION 2. A new section to chapter 43-15 of the North Dakota Century Code is created and enacted as follows:

Injection of drugs - Rules. Any pharmacist who administers drugs by injection must have a certificate of authority from the board. The authority to

¹⁸³ Section 43-15-01 was also amended by section 8 of House Bill No. 1096, chapter 213.

administer a drug by injection may not be delegated. The board shall adopt rules to establish educational and operational requirements for a pharmacist to obtain and maintain a certificate of authority to administer drugs by injection. Rules adopted by the board under this section must include:

1. Educational requirements of a minimum of twenty hours, which include, at a minimum:
 - a. Basic immunology, including the human immune response;
 - b. The mechanism of immunity, adverse effects, dose, and administration schedule of available vaccines and approved medication and immunization;
 - c. Current immunization guidelines and recommendations of the centers for disease control and prevention;
 - d. Management of adverse events, including identification, appropriate response, documentation, and reporting;
 - e. How to educate patients on the need for immunizations;
 - f. Physiology and techniques for subcutaneous, intradermal, and intramuscular injection; and
 - g. Recordkeeping requirements established by law, rule, and regulation or established standards of care.
2. A requirement that an authorized pharmacist must obtain and maintain current certification in cardiopulmonary resuscitation or basic cardiac life support.
3. Requirements to maintain continuing competency with completion of a minimum of six hours of education dedicated to this area of practice every two years.
4. Requirements for content of physician orders and protocols.
5. Requirements relating to the reporting of the administration by injection to a patient's primary health care provider and to the state department of health.
6. Requirements relating to environments in which injections may be administered.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 376**SENATE BILL NO. 2140**

(Industry, Business and Labor Committee)
(At the request of the State Board of Pharmacy)

PHARMACIST PRESCRIPTIVE PRACTICE

AN ACT to amend and reenact subsection 1 of section 43-15-31.4 of the North Dakota Century Code, relating to limited prescriptive practices of pharmacists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-15-31.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A licensed pharmacist in an institutional setting has limited prescriptive practices to initiate or modify drug therapy following diagnosis and initial patient assessment by a licensed physician, under the supervision of the same licensed physician, in accordance with this section. An institutional setting, for the purpose of this section, is a hospital, a physician clinic, a skilled nursing facility, or a swing bed facility in which a patient's medical records are readily available to the licensed physician and the licensed pharmacist.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 377

SENATE BILL NO. 2141

(Industry, Business and Labor Committee)
(At the request of the State Board of Medical Examiners)

PHYSICIAN ASSISTANT PRESCRIPTIVE AUTHORITY

AN ACT to amend and reenact section 43-17-02.1 of the North Dakota Century Code, relating to prescriptive authority of physician assistants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-02.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-02.1. Physician assistant - Limitations on prescribing drugs. ~~A physician assistant may not prescribe medications except as an agent of the supervising physician. A physician assistant may prescribe medications, in the name of the supervising physician if the authority has been assigned by the as~~ delegated to do so by a supervising physician. This may include schedule III through V controlled substances; however, a physician assistant may not prescribe schedule II controlled substances. The prescription container label must bear the name of the supervising physician and may also bear the name of the physician assistant. Appropriate medical records must be maintained. The state board of medical examiners shall notify the board of pharmacy in writing annually, or more frequently if required by changes, of each physician assistant who is authorized as an agent of a supervising physician to prescribe medications. A physician assistant who is a delegated prescriber of controlled substances must register with the federal drug enforcement administration.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 378

SENATE BILL NO. 2163

(Industry, Business and Labor Committee)
(At the request of the State Board of Medical Examiners)

BOARD OF MEDICAL EXAMINERS ORDERS AND INVESTIGATIONS

AN ACT to amend and reenact section 23-34-04, subsection 9 of section 43-17-31, sections 43-17-31.1, 43-17-32.1, subsection 1 of section 43-17.1-02, subsection 1 of section 43-17.1-05, and subsection 3 of section 43-17.1-06 of the North Dakota Century Code, relating to references to commission on medical competency, ex parte temporary suspension orders issued by the state board of medical examiners, and investigative panels of the state board of medical examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-34-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-34-04. Peer review committee - Mandatory reports. A peer review committee shall report to ~~the commission on~~ an investigative panel of the board of medical competency examiners any information that indicates a probable violation of subsection 4, 5, 16, or 17 of section 43-17-31. A health care organization is guilty of a class B misdemeanor if its peer review committee fails to make any report required by this section.

SECTION 2. AMENDMENT. Subsection 9 of section 43-17-31 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. The violation of any provision of a medical practice act or the rules and regulations of the board, or any action, stipulation, condition, or agreement imposed by the board or ~~the commission on medical competency~~ its investigative panels.

SECTION 3. AMENDMENT. Section 43-17-31.1 of the North Dakota Century Code is amended and reenacted as follows:

43-17-31.1. Costs of prosecution - Disciplinary proceedings. In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a physician, the board may direct any physician to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and ~~the commission on medical competency~~ its investigative panels in the investigation and prosecution of the case. When applicable, the physician's license may be suspended until the costs are paid to the board. A physician may challenge the reasonableness of any cost item in a hearing under chapter 28-32 before an administrative law judge. The administrative law judge may approve, deny, or modify any cost item, and the determination of the judge is final. The hearing must occur before the physician's license may be suspended for nonpayment.

¹⁸⁴ **SECTION 4. AMENDMENT.** Section 43-17-32.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-17-32.1. Temporary suspension - Appeal.

1. When, based on verified evidence, the board ~~has probable cause to believe that the suspension of a physician's license is required to reasonably protect the public from imminent or critical harm~~ determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the physician would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the physician's license is required to reasonably protect the public from that risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension to the physician, which must include a copy of the order and complaint, the date set for a full hearing, and a specific description of the nature of the evidence, including a list of all known witnesses and a description of any documents relied upon by the board in ordering the temporary suspension which, upon request, must be made available to the physician.
2. An ex parte temporary suspension remains in effect ~~for not more than sixty days, unless~~ until a final order is issued after a full hearing or appeal under this section or until the suspension is otherwise terminated by the board.
3. The board shall ~~set the date of a full hearing for suspension or revocation of the physician's license for~~ conduct a hearing on the merits of the allegations to determine what disciplinary action, if any, shall be taken against the physician who is the subject of the ex parte suspension. That hearing must be held not later than sixty thirty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order the board shall serve the physician with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing. The physician is entitled to a continuance of the thirty-day period upon request for a period determined by the hearing officer.
4. The physician may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition thereof.

SECTION 5. AMENDMENT. Subsection 1 of section 43-17.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹⁸⁴ Section 43-17-32.1 was also amended by section 2 of Senate Bill No. 2117, chapter 393.

1. For the purpose of investigating complaints or other information that might give rise to a disciplinary proceeding against a physician, a physician assistant, or a fluoroscopy technologist, the president of the board must designate two investigative panels, each comprised of five members of the board, ~~excluding the president~~. Four members of each panel must be physician members of the board. One member of each panel must be a public member of the board. ~~In addition, the~~ The president of the board shall serve on ~~both~~ neither investigative ~~panels~~ panel.

SECTION 6. AMENDMENT. Subsection 1 of section 43-17.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any person may make or refer written complaints to the investigative panels with reference to the acts, activities, or qualifications of any physician, physician assistant, or fluoroscopy technologist licensed to practice in this state, or to request that an investigative panel review the qualifications of any physician, physician assistant, or fluoroscopy technologist to continue to practice in this state. Any person who, in good faith, makes a report to the investigative panels under this section is not subject to civil liability for making the report. For purposes of any civil proceeding, the good faith of any person who makes a report pursuant to this section is presumed. Upon receipt of any complaint or request, the investigative panel shall conduct the investigation as it deems necessary to ~~resolve the matter as it deems appropriate~~. The investigative panel shall determine whether a formal hearing should be held to determine whether any physician, physician assistant, or fluoroscopy technologist has committed any of the grounds for disciplinary action provided for by law. Upon completion of its investigation, the investigative panel shall make a finding that the investigation discloses that:
 - a. There is insufficient evidence to warrant further action;
 - b. The conduct of the physician, physician assistant, or fluoroscopy technologist does not warrant further proceedings but the investigative panel determines that possible errant conduct occurred that could lead to significant consequences if not corrected. In such a case, a confidential letter of concern may be sent to the physician, physician assistant, or fluoroscopy technologist; or
 - c. The conduct of the physician, physician assistant, or fluoroscopy technologist indicates that the physician, physician assistant, or fluoroscopy technologist may have committed any of the grounds for disciplinary action provided for by law and which warrants further proceedings.

SECTION 7. AMENDMENT. Subsection 3 of section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Require~~ Upon probable cause, require any physician, physician assistant, or fluoroscopy technologist under investigation to submit to a physical, psychiatric, or competency examination, or chemical dependency evaluation.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 379

HOUSE BILL NO. 1462

(Representatives N. Johnson, Porter, Svedjan)
(Senators Lee, T. Mathern)

INJURY REPORTING DUTY

AN ACT to amend and reenact section 43-17-41 of the North Dakota Century Code, relating to the duty to report injuries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-41 of the North Dakota Century Code is amended and reenacted as follows:

43-17-41. Duty of physicians and others to report injury - Penalty.

1. Any physician, physician assistant, or other medical or mental health professional, any individual licensed under chapter 43-12.1 who ~~has~~ under his charge or care or performs any professional services diagnosis or treatment for any person individual suffering from any wound, injury, or other physical trauma ~~inflicted~~:
 - a. Inflicted by his the individual's own act or by the act of another by means of a knife, gun, or pistol, shall as soon as practicable report the wound, injury, or trauma to a law enforcement agency in the county in which the care was rendered; or which he
 - b. Which the individual performing diagnosis or treatment has reasonable cause to suspect was inflicted in violation of any criminal law of this state, shall as soon as practicable report the same wound, injury, or trauma to the sheriff or state's attorney of a law enforcement agency in the county in which such the care was rendered.
2. ~~1.~~ 3. The report under subsection 1 must state the name of the injured ~~person, if known, his whereabouts,~~ individual and the character and extent of ~~his the individual's~~ injuries.
2. ~~3.~~ 3. When a report of domestic violence, as defined in section 14-07.1-01, or a report of physical injury resulting from a sexual offense as defined in chapter 12.1-20 is made to a law enforcement agency as required by this section, the injured individual must be provided with information regarding a domestic violence sexual assault organization as defined in section 14-07.1-01 or other victims' assistance program by the physician, physician assistant, or any individual licensed under chapter 43-12.1, unless it is known that the information has previously been provided to the injured individual.
4. The reports mandated by this section must be made as soon as practicable and may be either oral or in writing. Oral reports must be followed by written reports within forty-eight hours if so requested by the sheriff or state's attorney to whom the oral report is originally made.

3. 5. Any ~~person~~ individual required to report as provided by this section who willfully fails to do so is guilty of an infraction.
4. 6. Any ~~person~~ individual making or not making a report in good faith pursuant to this section is immune from liability for making ~~said~~ or not making a report.

Approved April 19, 2001

Filed April 19, 2001

CHAPTER 380

SENATE BILL NO. 2161

(Industry, Business and Labor Committee)
(At the request of the Board of Dental Examiners)

DENTAL REGISTRATION, LICENSURE, AND PRACTICE

AN ACT to amend and reenact section 43-20-02, subsection 2 of section 43-20-03, sections 43-20-06 and 43-20-07, subsection 1 of section 43-20-12, sections 43-20-12.1, 43-28-05, 43-28-12.2, 43-28-16, and 43-28-17, and subsection 1 of section 43-28-25 of the North Dakota Century Code, relating to dentists and dental hygienists registration, licensure, and practice.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-20-02 of the North Dakota Century Code is amended and reenacted as follows:

43-20-02. Dental hygienists - Qualifications - Examinations - Registration and license. Any person who is of good moral character, who is not already a licensed dental hygienist of this state, who is a graduate of an accredited high school or its equivalent, and who is a graduate of a school of dental hygiene which is approved or provisionally approved by the commission on dental accreditation of the American dental association and which provides a minimum of two academic years of dental hygiene curriculum, upon applying for a license and paying an amount determined by the state board of dental examiners, may be examined by the board, on the subjects considered essential by it for a dental hygienist. The examinations must be conducted by the board or by a designee of the board, or by a regional dental testing service in which the board participates, or by other national or regional dental testing services that the board recognizes. If the applicant, in the opinion of the board, successfully passes the examination, the applicant may be registered and licensed as a dental hygienist. Applicants who fail to pass a satisfactory initial examination may be reexamined upon payment of the fee determined by the board for each subsequent examination. ~~An applicant may not be allowed to take more than three examinations.~~ The board shall determine the number of times an applicant may be reexamined. However, if the applicant fails on three occasions to pass the examination given by the board or an equivalent examination under section 43-28-12.1, the applicant shall provide evidence of additional education as required by the board before applying for another examination in this state. Applicants for examination shall submit their credentials to the board at least thirty days before the examination date. The examination date must correspond to the date of examination for applicants for a license to practice dentistry in this state.

The state board of dental examiners may accept the results of the national board examination as the equivalent to the testing of an applicant by the board in all areas covered by the national board examination.

SECTION 2. AMENDMENT. Subsection 2 of section 43-20-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The patient is being treated at the primary or satellite practice location of the supervising dentist, a public health setting, a hospital, a long-term care facility, or in an institutional type setting;

SECTION 3. AMENDMENT. Section 43-20-06 of the North Dakota Century Code is amended and reenacted as follows:

43-20-06. License - Fees - Display. ~~On or before January first of each year~~ In the month prior to expiration, every licensed dental hygienist shall pay to the board of dental examiners a registration fee as required by the board of dental examiners, and in default of the payment, the board, upon thirty days' notice, may revoke or suspend the license of the hygienist in default. The payment of the fee within that thirty-day period, with an additional sum determined by the board, excuses the default. The board may collect the fee by suit. Each licensed hygienist shall display conspicuously at the place of employment the annual registration license.

SECTION 4. AMENDMENT. Section 43-20-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-07. Licensure by credential review. Any dental hygienist who is a graduate of a school of dental hygiene which is approved or provisionally approved by the commission on dental accreditation of the American dental association and which provides a minimum of two academic years of dental hygiene curriculum, who has been licensed and who has been actively practicing dental hygiene for at least three years prior to the application to practice in this state, who is of good moral character and desirous of removing to this state, who deposits with the board of dental examiners a license from the examining board of the state in which the dental hygienist is licensed, certifying to the fact of being licensed, and who provides reference letters from three dentists or hygienists attesting to the dental hygienist's clinical competence, good moral character, and professional attainment, may upon the payment of the fee determined by the board, in the discretion of the board, and upon the satisfactory passing of such examinations as the board deems necessary and proper, be granted a license to practice in this state.

SECTION 5. AMENDMENT. Subsection 1 of section 43-20-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A licensed dentist may delegate to a competent dental hygienist or dental assistant those procedures over which the dentist exercises full responsibility, except those procedures that require professional judgment and skill such as diagnosis and treatment planning, the cutting of hard or soft tissue, or any intraoral procedure which would lead to the fabrication of any appliance that, when worn by the patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury. A dental hygienist or dental assistant may take impressions for athletic mouthguards, for rapid palatal expanders, and for passive posttreatment orthodontic retainers that do not replace missing teeth. A dental hygienist may prepare oral hygiene treatment plans to be approved by the supervising dentist.

SECTION 6. AMENDMENT. Section 43-20-12.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-20-12.1. Continuing educational requirement for dental hygienists. Upon the ~~fifth~~ second anniversary of the issuance of a ~~license~~ certificate of

registration to practice dental hygiene and each ~~five~~ two years thereafter, each person licensed to practice dental hygiene in this state shall provide the state board of dental examiners evidence, of a nature suitable to the board, that the licensed person has attended, or participated in the amount of continuing education in dental hygiene as is required by the board. The minimum requirement may not be less than ~~forty sixteen~~ hours during the preceding ~~five~~ two years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other evidence of continuing education approved by the board.

Any licensed person who fails to comply with this requirement may, at the discretion of the board, be reexamined to determine the person's competency to continue licensure. If, in the opinion of the board, the licensed person does not qualify for further licensed practice, the board shall suspend the license until the dental hygienist provides acceptable evidence to the board of the hygienist's competency to practice.

SECTION 7. AMENDMENT. Section 43-28-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-05. Meeting of board - Officers - Bond - Compensation of members - Quorum. The board shall hold a regular annual meeting, at a place designated by the board and special meetings when necessary. At the regular meeting of the board, the members shall elect from their number a president, ~~vice president~~, a member who has at least two years remaining on that member's term, president elect, a member who has at least three years remaining on that member's term, and a secretary-treasurer. The ~~secretary-treasurer~~ executive director shall furnish a bond in the amount fixed by the board. Each member of the board shall receive as compensation the sum of ~~ninety one hundred ten~~ dollars for each day actually engaged in the duties of the office and reimbursement for expenses as provided in section 54-06-09 while attending meetings of the board. The ~~secretary-treasurer~~ executive director may be paid an annual salary in an amount determined by the board. Four members of the board constitute a quorum but a smaller number may adjourn from time to time.

SECTION 8. AMENDMENT. Section 43-28-12.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-28-12.2. Continuing educational requirement for dentists. Upon the ~~fifth~~ second anniversary of the issuance of a ~~license~~ certificate of registration to practice dentistry and each ~~five~~ two years thereafter, each person licensed to practice dentistry in this state shall provide the board evidence, of a nature suitable to the board, that the licensed person has attended, or participated in the amount of continuing education in dentistry required by the board. The minimum requirement may not be less than ~~eighty thirty-two~~ hours during the preceding ~~five~~ two years of licensure. The board may accept for compliance with this requirement any of the following which, in the opinion of the board, contributes directly to the dental education of the licensee:

1. Attendance at lectures, study clubs, college postgraduate courses, or scientific sessions of conventions.
2. Research, graduate study, teaching, or service as a clinician.
3. Any other evidence of continuing education approved by the board.

Any licensed dentist who fails to comply with this requirement may, at the discretion of the board, be reexamined to determine the dentist's competency to continue licensure. If, in the opinion of the board, the licensed dentist does not qualify for further licensed practice, the board shall suspend the license until the dentist provides acceptable evidence to the board of the dentist's competency to practice.

SECTION 9. AMENDMENT. Section 43-28-16 of the North Dakota Century Code is amended and reenacted as follows:

43-28-16. Certificate - Term - Displayed in place of business - Renewal - Fee. A certificate of registration issued under this chapter is valid for ~~only one year~~ two years and must be renewed ~~on or before the first day of January in each year in the month prior to expiration.~~ The fee for renewal of the certificate must be determined by the board and must be submitted ~~before January first at the time of renewal.~~ The holder of a license and certificate of registration shall display the license and certificate conspicuously in the holder's place of business. The certificate of registration or the renewal of the certificate is prima facie evidence of the right of the holder to practice dentistry in this state during the time for which it is issued. All fees provided for in this chapter may be collected by the board in a civil action.

SECTION 10. AMENDMENT. Section 43-28-17 of the North Dakota Century Code is amended and reenacted as follows:

43-28-17. Failure to pay annual fee - Revocation of license. Whenever a licensed dentist fails to pay the annual fee for the renewal of the certificate of registration ~~before January first~~ on or before the due date of the payment, after thirty days' written notice of the default without proper payment, the board may revoke the license to practice dentistry and notify the dentist of the revocation. The payment of the annual fee within the thirty-day period, with an additional sum determined by the board will excuse the default.

SECTION 11. AMENDMENT. Subsection 1 of section 43-28-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. For any dentist, dental hygienist, legal entity, or unlicensed person, who owns, operates, or controls any room or office where dental work of any kind is done or contracted for, to employ, keep, or retain any unregistered dentist ~~or~~, dental hygienist, dental assistant, or other unlicensed unregistered persons to do any dental work whatsoever, except as otherwise provided by statute or rule.

Approved March 15, 2001
Filed March 15, 2001

CHAPTER 381

SENATE BILL NO. 2208

(Senators Krebsbach, Lee, Watne)

REAL ESTATE BROKER DUTIES

AN ACT to amend and reenact section 43-23-12.2 of the North Dakota Century Code, relating to the duties and liabilities of real estate brokerage firms and clients.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-12.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-23-12.2. Duties supersede common law.

1. The duties of a real estate brokerage firm, and ~~its~~ the firm's licensees, as specified in this chapter or in rules adopted ~~under~~ to implement this chapter, supersede any fiduciary duties of that real estate brokerage firm and ~~its~~ the firm's licensees, to a person based on common-law principles of agency to the extent that those common-law fiduciary duties are inconsistent with the duties specified in this chapter or in rules adopted ~~under~~ to implement this chapter.
2. A client is not liable for a wrongful act, an error, an omission, or a misrepresentation made by a licensee in connection with the licensee providing brokerage services for the client, including brokerage services provided under a subagency relationship, unless the client knows or should have known of the wrongful act, error, omission, or misrepresentation or unless the licensee is repeating a misrepresentation made by the client. This subsection ~~is intended to supersede~~ supersedes any conflicting common-law duty of the client ~~that is inconsistent with this subsection.~~
3. A real estate brokerage firm that is providing brokerage services to a client ~~and which, through a subagency relationship, works with another real estate brokerage firm to provide brokerage services to that client~~ is not liable for a wrongful act, an error, an omission, or a misrepresentation made by the ~~other~~ client, listing agent of another real estate brokerage firm, or subagent of another real estate brokerage firm, unless the ~~original~~ real estate brokerage firm knew or should have known of the ~~other brokerage firm's~~ wrongful act, error, omission, or misrepresentation or ~~the other brokerage firm~~ unless the client, listing agent of another real estate brokerage firm, or subagent of another real estate brokerage firm is repeating a misrepresentation made by the ~~original~~ real estate brokerage firm.

4. This section does not limit the liability of a licensee under section 43-23-11.1 ~~or~~ nor of a client for substantial and willful misrepresentations made in reference to a real estate transaction. As used in this section, the term "real estate brokerage firm" includes the firm and brokers and agents who work for the firm.

Approved April 9, 2001

Filed April 10, 2001

CHAPTER 382

SENATE BILL NO. 2078

(Political Subdivisions Committee)

(At the request of the State Real Estate Commission)

REAL ESTATE BROKER INSURANCE

AN ACT to create and enact five new sections to chapter 43-23 of the North Dakota Century Code, relating to real estate salesperson and broker errors and omissions insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Five new sections to chapter 43-23 of the North Dakota Century Code are created and enacted as follows:

Errors and omissions insurance required of salespersons and brokers - Rules. The real estate commission shall adopt rules pursuant to chapter 28-32 requiring as a condition of licensure that, effective January 1, 2002, and thereafter, all real estate salespersons and brokers, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter.

Group insurance coverage authorized - Independent errors and omissions coverage. The real estate commission may negotiate by bid with an insurance provider for a group policy under which coverage is available to all licensees with no right on the part of the insurer to cancel coverage provided to any licensee, except as provided by rules adopted by the commission. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

Commission to determine conditions of errors and omissions coverage. The real estate commission shall determine the terms and conditions of errors and omissions coverage required by this chapter, including the minimum limits of coverage, the permissible deductible, and the permissible exceptions.

Notice of terms and conditions of errors and omissions - Certificate of coverage. Each licensee must be notified of the required terms and conditions of coverage at least thirty days before the annual license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed annually with the real estate commission by each licensee who elects not to participate in the group insurance program administered by the real estate commission.

Errors and omissions coverage not required if premium limit unobtainable. If the real estate commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the group program at a reasonable premium not to exceed one hundred twenty-five dollars, the errors and omissions insurance requirement of this section does not apply during the year for which coverage cannot be obtained.

Approved March 22, 2001

Filed March 22, 2001

CHAPTER 383

SENATE BILL NO. 2206 (Senator Tomac)

REAL ESTATE APPRAISER PRACTICE PERMITS

AN ACT to amend and reenact section 43-23.3-04, subsection 2 of section 43-23.3-08, subsection 1 of section 43-23.3-09, and section 43-23.3-23 of the North Dakota Century Code, relating to permits to practice as a real estate appraiser; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23.3-04 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-04. Permit required - Exemptions. Except as provided in this section, ~~beginning July 1, 1994,~~ a person may not directly or indirectly engage in, advertise, conduct the business of, or act in any capacity as a licensed or certified appraiser without first obtaining a permit as provided in this chapter. An appraiser licensed or certified in another state may not engage in, advertise, conduct the business of, or act in any capacity as an appraiser in this state without first obtaining a nonresident permit under section 43-23.3-11. This chapter does not apply to a licensed real estate broker or salesman who, in the ordinary course of business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate. However, the opinion as to the listing price or the purchase price may not be referred to as an appraisal. This chapter does not apply to a person who, in the ordinary course of business, gives an opinion of the value of real estate to that person's employer.

SECTION 2. AMENDMENT. Subsection 2 of section 43-23.3-08 of the North Dakota Century Code is amended and reenacted as follows:

2. An applicant for a permit to practice as a licensed appraiser must have a high school education or its equivalent. In addition, an applicant must have successfully completed the minimum education requirements established by the appraisal ~~subcommittee~~ foundation and the board.

SECTION 3. AMENDMENT. Subsection 1 of section 43-23.3-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The board may issue a permit to practice as a licensed appraiser to an individual who possesses the minimum experience requirements established by the appraisal ~~subcommittee~~ foundation and the board.

SECTION 4. AMENDMENT. Section 43-23.3-23 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-23. Penalties. A person acting or purporting to act as a licensed or a certified appraiser without holding a permit to practice is guilty of a class A misdemeanor. An appraiser licensed or certified in another state who engages in, advertises, conducts the business of, or acts in any capacity as an appraiser without first obtaining a nonresident permit is guilty of a class A misdemeanor. In addition to any other penalty, a person receiving any money or other compensation in violation of this chapter is subject to a penalty of not less than the amount of the sum of money received and not more than three times the sum in the discretion of the court.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 384

HOUSE BILL NO. 1155

(Industry, Business and Labor Committee)
(At the request of the Board of Massage)

MASSAGE PRACTICE

AN ACT to create and enact a new section to chapter 43-25 of the North Dakota Century Code, relating to the duties of the board of massage; to amend and reenact sections 43-25-02, 43-25-03, 43-25-04, 43-25-05, 43-25-06, 43-25-07, 43-25-08, 43-25-09, 43-25-10, 43-25-13, 43-25-14, 43-25-18, and 43-25-19 of the North Dakota Century Code, relating to the practice of massage; to repeal sections 43-25-11, 43-25-12, and 43-25-16 of the North Dakota Century Code, relating to the practice of massage; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-02 of the North Dakota Century Code is amended and reenacted as follows:

43-25-02. Definitions.

1. "Board" means the North Dakota board of massage.
2. "Massage" means the scientific and systematic manipulation of the soft tissues of the human body through any manual or mechanical means, including superficial hot and cold applications, hydrotherapy, reflexology, and the use of salts or lubricants. "Massage" does not include diagnosing or treating diseases, manipulating the spine or other joints, or prescribing or administering vitamins.
3. "Massage establishment" means any place of business where one or more of the subjects and methods of treatments defined in this section are administered or used in which massage is practiced.
3. 4. "Massage therapist" means a person an individual who practices or administers any of the following subjects and who has studied the underlying principles of anatomy and physiology generally included in a regular course of study by a recognized and approved school of massage: the art of body massage either by hands or with a mechanical or vibratory apparatus for the purpose of body massaging; reducing or contouring; the use of oil rubs, heat lamps, salt glows, hot and cold packs, tub, shower, or cabinet baths. Massage is the practice of a profession scientifically applied to the patient by the operator's hands and includes such modalities as acupressure and polarity and, after July 1, 1993, massage includes reflexology. Variations of the following procedures are used: touch, stroking, friction, kneading, vibration, percussion, and medical gymnastics. Massage therapists may not diagnose or treat classified diseases, practice spinal or other joint manipulations, or prescribe or administer vitamins massage.

SECTION 2. AMENDMENT. Section 43-25-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-03. Massage therapists to be licensed. A person may not:

1. ~~Engage in the practice or~~ Practice massage, attempt to practice massage for a fee or gratuity, or ~~to conduct or teach~~ massage techniques, for a fee or gratuity or as a free demonstration, without a license issued under this chapter;
2. Operate or conduct a massage establishment unless it meets the sanitary requirements of this chapter and any regulations adopted by the board;
3. Employ an unlicensed person to ~~work as~~ perform a massage therapist; or
4. Practice any branch of massage as defined in subsection 3 of section 43-25-02, whether for payment or free demonstration, without first being a licensed massage therapist under this chapter, or without operating and maintaining a bona fide massage establishment, and without first paying a license fee to the board. Use the title "massage therapist" or the abbreviations "L.M.T." or "M.T." without a license issued by the board.

SECTION 3. AMENDMENT. Section 43-25-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-04. Exemptions. The following ~~classes of~~ persons are exempt from this chapter:

1. ~~Persons authorized by the laws of this state to practice medicine, surgery, osteopathy, chiropractic, podiatry, or persons holding a drugless practitioner's certificate under the laws of this state.~~
2. ~~Registered nurses and licensed practical nurses under the laws of this state.~~
3. ~~Registered physical therapists and physical therapist assistants under the laws of this state.~~
4. ~~Schools and YMCA clubs who that furnish therapy and massage services to their players and members~~ student athletes.
5. ~~Registered hairdressers and cosmetologists under the laws of this state.~~
6. ~~Registered barbers under the laws of this state.~~
7. ~~Reflexologists licensed under chapter 43-49.~~
8. 2. Any student of a school of massage who is practicing massage in the course of fulfilling a required massage therapy practicum under the direct supervision of a licensed massage therapist or in the course of participating in a school-supervised student massage clinic under the direct supervision of a licensed massage therapist.

Any exemption granted under this chapter is effective only insofar as and to the extent that the bona fide practice of the profession or business of the person exempted overlaps into the field comprehended by this chapter, and exemptions under this chapter are only for those

3. Any individual who is engaged in a profession or occupation for which the individual is licensed by this state, as long as the individual's activities which are performed in the course of the bona fide practice of the business or individual's profession of the person exempted or occupation and as long as the individual does not represent to the public that the individual is a massage therapist or is engaged in the practice of massage.
4. A health spa or similar business to the extent the spa or business is performing superficial applications, including salt glows and contouring.

SECTION 4. AMENDMENT. Section 43-25-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-05. Board of massage - Terms. The governor shall appoint ~~the a~~ board of massage, to consist of ~~three~~ five members. Three of the members of the board must be massage therapists who are licensed in this state. The members must be appointed for three years, staggered so that the term of one member expires each year; and each. Two additional members, who may not be massage therapists or immediate family members of a massage therapist, must be appointed as consumer members for two-year terms, staggered so that the term of one member expires each year. Each member shall hold of the board holds office until that member's successor is appointed and qualified.

SECTION 5. AMENDMENT. Section 43-25-06 of the North Dakota Century Code is amended and reenacted as follows:

43-25-06. Removal of members of board of massage - Officers of the board - Meeting. The governor may remove from office members of the board for neglect of duties as required by this chapter or for malfeasance in office and incompetency, or for unprofessional conduct. The governor may fill any vacancy caused by removal of any member of the board, on ~~his or her~~ the member's resignation or death; and all such appointees are to be practicing massage therapists in the state.

The board shall within two weeks after its appointment meet at some convenient place within the state and shall annually elect a president from their own members, and a secretary-treasurer. The secretary-treasurer must be bonded in the sum of one thousand dollars for the faithful discharge of ~~his~~ the secretary-treasurer's duties. ~~The board shall hold examinations from time to time at such place or places as the board may designate.~~

It shall also be the duty of the board from time to time to examine and inspect ~~or cause to be examined or inspected all massage establishments. The board and its agents and employees are authorized to enter and inspect any such massage establishment at any time during which the establishment is open for the transaction of business.~~

SECTION 6. A new section to chapter 43-25 of the North Dakota Century Code is created and enacted as follows:

Powers and duties of the board. The board has the following powers and duties:

1. The board may adopt and enforce rules as necessary to implement this chapter.
2. The board shall periodically inspect or cause to be inspected all massage establishments. The board and its agents are authorized to enter and inspect any massage establishment at any time during which the establishment is open for the transaction of business.

SECTION 7. AMENDMENT. Section 43-25-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-07. (Effective through July 31, 2001) Requisites for application and examination - Subjects - Minimum passing grade - Fee for reexamination.

1. Any person who is eighteen years of age or more, a high school graduate, a bona fide resident of this state for at least one month immediately preceding the application to take the examination, and of good moral character and temperate habits is entitled to apply to the secretary-treasurer of the board. An applicant is entitled to massage therapist licensure if the applicant:
 - a. Presents a diploma or credentials issued by a school of massage that meets the standards set by the board which may not be less than the standards of the American massage therapy association commission on massage therapy accreditation; or if the board has not adopted standards, the school of massage meets the curriculum guidelines of the American massage therapy association commission on massage therapy accreditation and the school requires at least seven hundred fifty hours of supervised instruction. Any student enrolled in a massage school on or before April 8, 1999, satisfies the requirements in this subdivision if the student presents a diploma or credentials issued by a school of massage that requires at least five hundred hours of instruction.
 - b. Passes a reasonable demonstrative, oral, and written examination conducted by the board in the art of body massage by hand or with any mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, salt glow, hot and cold packs, tub, shower, heat lamps, and similar baths.
 - c. Pays the required fees. These fees must accompany the application to the secretary-treasurer of the board.
2. An applicant must achieve a general average score in the examination of seventy-five percent in all subjects involved and no score of less than fifty percent in any one subject. Any applicant failing to pass the requirements is entitled to a reexamination within six months upon payment of an additional fee of fifty dollars or a lesser amount established by the board, but two reexaminations exhaust the privilege under the original application.
3. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines the offense has a direct

bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.

(Effective after July 31, 2001) Requisites for application and examination - Subjects - Minimum passing grade - Fee for reexamination.

1. Any person who is eighteen years of age or more, a high school graduate, a ~~bona fide resident of this state for at least one month immediately preceding the application to take the examination,~~ and of good moral character and temperate habits is entitled to apply to the ~~secretary-treasurer of the board.~~ An applicant is entitled to massage therapist licensure may receive a license from the board as a massage therapist if the applicant:
 - a. ~~Presents a diploma or credentials issued by a school of massage that meets the standards set by the board, which may not be less than the standards of the American massage therapy association.;~~
 - b. ~~Passes a reasonable demonstrative, oral, and written an examination conducted or approved by the board in the art of body massage by hand or with any mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, salt glow, hot and cold packs, tub, shower, heat lamps, and similar baths.;~~ and
 - c. ~~Pays the required fees. These fees, which~~ must accompany the application to the ~~secretary-treasurer of the board.~~
2. ~~An applicant must achieve a general average score in the examination of seventy five percent in all subjects involved and no score of less than fifty percent in any one subject.~~ Any applicant failing to pass the requirements examination is entitled to a reexamination within six months upon payment of an additional fee of fifty dollars or a lesser amount established by the board, but two reexaminations exhaust the privilege under the original application.
3. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines the offense has a direct bearing upon a person's ability to serve the public as a massage therapist or the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 8. AMENDMENT. Section 43-25-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-08. Fee for license. The fee to receive a license as a massage therapist is one hundred fifty dollars or a lesser amount established by the board.

SECTION 9. AMENDMENT. Section 43-25-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-09. License - Display - Renewal - Renewal fee.

1. Each license must be conspicuously displayed at the place of practice ~~and must be recorded within thirty days after issuance in the office of the~~

register of deeds in any county where the licensed massage therapist practices, unless the board of county commissioners designates a different official.

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.
3. If the board reasonably believes a massage therapist or applicant is in a physical condition jeopardizing the health of those who seek relief from the ~~massage therapist individual~~, the board may require the ~~applicant individual~~ to have a physical examination by a competent medical examiner. If the ~~applicant individual~~ has had or has any communicable disease sufficient to disqualify the applicant to practice massage in the state, the board shall deny a license until the ~~applicant individual~~ furnishes due proof of being physically and mentally competent and sound.
4. A holder of an expired license may within one year from the date of its expiration have the license renewed upon payment of the required renewal fee and production of a new certificate of physical examination.
5. All licenseholders must be designated as licensed massage therapists and may not use any title or abbreviation without the designation "massage therapist".

SECTION 10. AMENDMENT. Section 43-25-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-10. Revocation of license - ~~Preferment of charges~~ Complaints.

1. The license of a massage therapist may be denied, revoked, suspended, or ~~annulled upon~~ placed on probation for any of the following grounds:

 - a. The licensee is guilty of fraud in the practice of massage or fraud or deceit in admission to the practice of massage.
 - b. The licensee has been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a massage therapist, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1. The conviction of an offense includes conviction in any jurisdiction in the United States of any offense, which if committed within this state would constitute an offense under this state's laws.
 - c. The licensee is engaged in the practice of massage under a false or assumed name, or is impersonating another practitioner of a like or different name.

- d. The licensee is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to the extent the licensee is incapacitated from performing the professional duties of a massage therapist.
 - e. The licensee is guilty of untrue, fraudulent, misleading, or deceptive advertising, the licensee prescribes medicines, drugs, or vitamins, or the licensee infringes on any other licensed profession.
 - f. The licensee is guilty of willful negligence in the practice of massage, or is guilty of employing, allowing, or permitting any unlicensed person to perform massage in the licensee's establishment.
 - g. The licensee has violated this chapter or any rule adopted by the board.
2. ~~Any licensee who does not renew a massage therapist license for two consecutive years because of sickness or other reason, or because of absence from the state, must take the examination as prescribed for an applicant to become a registered operator and comply with all the provisions of this chapter applicable to any applicant to become a licensee.~~
3. ~~Charges~~ A complaint may be preferred submitted to the board by any person, or ~~the board may~~ on its own motion direct the executive officer of the board to prefer any charges. Any accusation may be filed with the secretary-treasurer of the board charging any licensed massage therapist with any of the offenses enumerated in this section. An accusation. A complaint must be signed by the ~~accuser~~ complainant and verified under oath.
3. Any hearing regarding a disciplinary action or a denial of a license must be held pursuant to chapter 28-32.

SECTION 11. AMENDMENT. Section 43-25-13 of the 1999 Supplement to 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 original books, records, and papers of the board must be kept at the office of the secretary-treasurer.~~ The secretary-treasurer shall furnish to any person a certified copy of any record; ~~certified by the secretary-treasurer,~~ 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 prepare and submit to the governor a biennial report detailing income and expenses and a list of massage therapists licensed.

SECTION 12. AMENDMENT. Section 43-25-14 of the North Dakota Century Code is amended and reenacted as follows:

43-25-14. Compensation of board members - Clerks. The board members shall receive ~~fifty dollars per day and traveling expenses while~~

compensation in an amount of sixty-two dollars per day or prorated for partial days for each day or portion of a day the member is actually engaged in their the performance of official duties and payment for mileage and travel expenses as provided in sections 44-08-04 and 54-06-09. The secretary-treasurer ~~must be paid three dollars per member per year~~ may receive additional compensation as set by the board. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid ~~said employees to the personnel.~~

SECTION 13. AMENDMENT. Section 43-25-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-25-18. Reciprocity. Any person who has been duly licensed in another state to practice massage in a state that has and maintains a standard of practice which is substantially the same as that maintained in this state, and who has been lawfully and continuously engaged in this practice for two years or more immediately before filing of an application to practice in this state, and who submits to the board a duly attested certificate from the examining board of the state in which registered, certifying to the fact of registration and being a person of good moral character and of professional attainments, may upon paying a fee of ~~thirty-five~~ one hundred fifty dollars or a lesser fee set by the board be granted a license to practice in this state without being required to take an examination; ~~however, no license may be issued to any applicant unless the state from which the certificate is granted extends a like privilege to engage in the practice of massage within its borders to persons licensed under this chapter, upon practicing in that other state. The board may enter reciprocal relations with other states whose requirements are substantially the same as those provided in this chapter.~~

SECTION 14. AMENDMENT. Section 43-25-19 of the North Dakota Century Code is amended and reenacted as follows:

43-25-19. Penalty for violation. Any person violating any of the provisions of this chapter is guilty of a class B misdemeanor. In addition to the criminal penalties provided, the board may initiate a 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.

SECTION 15. REPEAL. Sections 43-25-11, 43-25-12, and 43-25-16 of the North Dakota Century Code are repealed.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 385

SENATE BILL NO. 2276

(Senators Nething, Fischer, Kilzer)
(Representatives Byerly, Eckre, Hawken)

DENTISTS' LOAN REPAYMENT PROGRAM

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to a dentists' loan repayment program; to provide a continuing appropriation; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

Loan repayment program - Dentists - Maximum amount of funds. Each year the state health council shall select from a pool of applicants no more than three dentists who shall provide dental services to communities in this state. The dentists are eligible to receive funds for the repayment of their education loans. The funds, which are payable over a four-year period, may not exceed eighty thousand dollars per applicant. If the state health council accepts any gifts, grants, or donations under this chapter, the council may select additional dentists for participation in the loan repayment program under this chapter.

Loan repayment program - Dentists - Powers of state health council. The state health council may:

1. Determine the eligibility and qualifications of an applicant for loan repayment funds under this chapter.
2. Identify communities that are in need of a dentist, and establish a priority ranking for participation in the program by the selected communities.
3. Create and distribute a loan repayment application.
4. Determine the amount of the loan repayment funds for which a dentist is eligible under this chapter and in making this determination, examine any outstanding education loans incurred by the applicant.
5. Establish conditions regarding the use of the loan repayment funds.
6. Enter a four-year nonrenewable contract with the dentist and the selected community to provide to the dentist funds for the repayment of education loans in exchange for the dentist agreeing to practice in the selected community.
7. Receive and use funds appropriated for the program.
8. Enforce any contract under the program.
9. Cancel a contract for reasonable cause.

10. Participate in federal programs that support the repayment of education loans incurred by dentists and agree to the conditions of the federal programs.
11. Accept property from an entity.
12. Cooperate with the state department of health to effectuate this chapter.

Dentist selection criteria - Eligibility for loan repayment.

1. In establishing the criteria regarding a dentist's eligibility for loan repayment funds under this chapter, the state health council shall include consideration of:
 - a. The dentist's training in general dentistry or in a dental specialty and the extent to which such services are needed in a selected community.
 - b. The dentist's commitment to serve in a community that is in need of a dentist.
 - c. The compatibility of the dentist with a selected community.
 - d. The date by which the dentist would be available for service to the selected community.
 - e. The dentist's competence and professional conduct.
 - f. The dentist's willingness to accept medicare and medicaid patients.
2. A dentist who is selected to receive loan repayment funds under this chapter:
 - a. (1) May not have practiced dentistry full-time in this state during the three years immediately preceding the application;
 - (2) Must have graduated from an accredited graduate specialty training program in dentistry during the year immediately preceding the application or within one year after the date of the application; or
 - (3) Must be enrolled in an accredited graduate specialty training program in dentistry; and
 - b. Must be licensed to practice dentistry in this state.
3. 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 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.

Community selection criteria.

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.
 - 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.
2. The state health council shall give priority for participation to a community that demonstrates a need for a dentist or for an individual who is trained in a dental specialty.
3. In evaluating communities for participation in this program, the state health council may consult with public and private entities and visit the communities.

Eligible loans. The state health council may provide for loan repayment funds to a dentist who has received an education loan. The council may not provide funds for the repayment of any loan that is in default at the time of the application. The amount of repayment must be related to the dentist's outstanding education loans. A dentist is eligible to receive loan repayment funds in an amount equal to the outstanding balance of the dentist's education loans with applicable interest, or eighty thousand dollars, whichever is less. Loan repayment funds may not be used to satisfy other service obligations under similar programs.

Breach of loan repayment contract. If a dentist who receives loan repayment funds under this chapter breaches the loan repayment program contract by failing to begin or failing to complete the obligated service, the dentist is liable for the total amount of any loan repayment funds received. Any damages the state is entitled to recover under this chapter must be paid to the state health council, within one year from the date of the breach. Any amounts not paid within one year from the date of the breach are subject to the collection process and may be recovered through deductions in medicaid payments. Damages recoverable for a breach of the contract include all interest, costs, and expenses incurred in collection, including attorney's fees. Damages collected under this section by the health council must be deposited in the state general fund. The health council may agree to accept a lesser measure of damages for breach of a loan repayment program contract if compelling reasons are demonstrated.

Release from contract obligation.

1. The state health council shall release a dentist from the dentist's loan repayment contract, without penalty, if:
 - a. The dentist has completed the service requirements of the contract;
 - b. The dentist is unable to complete the service requirement of the contract because of a permanent physical disability;
 - c. The dentist demonstrates to the health council extreme hardship or shows other good cause justifying the release; or
 - d. The dentist dies.
2. A decision by the state health council not to release a dentist from the dentist's loan repayment contract without penalty is reviewable by district court.

Payment. The state health council may not provide any loan repayment funds to a dentist under this chapter until the dentist has practiced at least six months on a full-time basis in the selected community. Loan repayment funds for a year of obligated service are payable by the state health council no later than the end of the fiscal year in which the dentist completes the year of obligated service.

Gifts, grants, and donations - Continuing appropriation. The state health council may accept any conditional or unconditional gift, grant, or donation for the purpose of providing funds for the repayment of dentists' educational loans. If any entity desires to provide funds to the council to allow an expansion of the program beyond the three dentists contemplated by this Act, the entity shall commit to fund fully the expansion for a period of four years. The council may contract with any public or private entity and may expend any moneys available to the council to obtain matching funds for the purposes of section 1 of this Act. All money received as gifts, grants, or donations under this section is appropriated as a continuing appropriation to the state health council for the purpose of providing funds for the repayment of additional dentists' educational loans.

SECTION 2. LEGISLATIVE INTENT. It is the intent of the fifty-seventh legislative assembly that the fifty-eighth legislative assembly provide sufficient funds for the continuation of any obligations entered by the state health council under this Act.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the community health trust fund in the state treasury, not otherwise appropriated, the sum of \$180,000, or so much of the sum as may be necessary, to the state health council for the purpose of providing a dentists' loan repayment program, for the biennium beginning July 1, 2001, and ending June 30, 2003.

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

Approved April 27, 2001
Filed April 27, 2001

CHAPTER 386**HOUSE BILL NO. 1079**

(Agriculture Committee)

(At the request of the Board of Veterinary Medical Examiners)

**BOARD OF VETERINARY MEDICAL EXAMINERS
CERTIFICATES**

AN ACT to amend and reenact subsection 5 of section 43-29-01.1 of the North Dakota Century Code, relating to the definition of a certificate required by the board of veterinary medical examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 43-29-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Certificate" means a certificate issued by the educational commission for foreign veterinary graduates or the educational equivalence program of the American association of veterinary state boards, indicating the holder has demonstrated knowledge and skill equivalent to that possessed by a graduate of an accredited or approved college of veterinary medicine.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 387

SENATE BILL NO. 2126

(Industry, Business and Labor Committee)

(At the request of the Private Investigative and Security Board)

PRIVATE INVESTIGATIVE AND SECURITY SERVICES

AN ACT to amend and reenact sections 43-30-01 and 43-30-02 of the North Dakota Century Code, relating to private investigative and security services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-01 of the North Dakota Century Code is amended and reenacted as follows:

43-30-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the private investigative and security board.
2. "License" includes a registration issued by the board.
3. "Licensee" includes an individual who is registered by the board.
4. "Private investigative service" means obtaining or furnishing information with reference to any act or individual.
3. 5. "Private security service" means furnishing for hire security officers or other persons to protect persons or property, or to prevent the theft or the unlawful taking of goods, wares, and merchandise, or to prevent the misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents or papers, or the business of performing the service of such security officer or other person for any of these purposes.

SECTION 2. AMENDMENT. Section 43-30-02 of the North Dakota Century Code is amended and reenacted as follows:

43-30-02. Exemptions. This chapter does not apply to:

1. Any investigator or officer employed by or under any contract with the federal government, state, or any county or city thereof, appointed, elected, or contracted with, by due authority of law, while engaged in the performance of official duties.
2. Any state's attorney.
3. Any attorneys or counselors at law in the regular practice of their profession and any paralegal or legal assistant employed by an attorney or law firm when the attorney or law firm retains complete responsibility for the work product of the paralegal or legal assistant.

4. Any person whose sole investigative business is the furnishing of information as to the business and financial standing and credit of persons.
5. Any person making any investigation of any matter in which that person or the person by whom that person is solely employed is interested or involved.
6. Any person making any investigation for any person engaged in the business of transporting persons or property in interstate commerce.
7. Any adjuster or investigator representing an insurance company.
8. A person whose sole investigative business is obtaining or furnishing information about acts or individuals from public records.

Approved March 19, 2001

Filed March 19, 2001

CHAPTER 388**HOUSE BILL NO. 1159**

(Judiciary Committee)

(At the request of the Attorney General)

DETECTION OF DECEPTION EXAMINER FEES

AN ACT to amend and reenact section 43-31-16 of the North Dakota Century Code, relating to detection of deception examiner fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-31-16 of the North Dakota Century Code is amended and reenacted as follows:

43-31-16. Examiner licensed in another state exempt from examination.

An applicant who is an examiner, licensed under the laws of another state of the United States, may be issued a license without examination by the attorney general, in ~~his~~ the attorney general's discretion, upon payment of a fee of ~~twenty-five~~ thirty-five dollars, and the production of satisfactory proof:

1. That the applicant is at least twenty-one years of age;
2. That the applicant is a citizen of the United States;
3. That ~~he~~ the applicant is of good moral character;
4. That the requirements for the licensing of examiners in such particular state of the United States were at the date of licensing, substantially equivalent to the requirements then in force in this state; and
5. That the applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state for at least two years prior to ~~his~~ the application for license hereunder.

Approved March 27, 2001

Filed March 27, 2001

CHAPTER 389

SENATE BILL NO. 2162

(Industry, Business and Labor Committee)
(At the request of the State Board of Respiratory Care)

RESPIRATORY CARE PRACTICE

AN ACT to amend and reenact sections 43-42-01, 43-42-02, 43-42-03, 43-42-04, 43-42-05, 43-42-06, and subsection 1 of section 43-46-01 of the North Dakota Century Code, relating to the practice of respiratory care.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-42-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-42-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Board" means the state board of respiratory care.
2. "Bona fide respiratory care training program" means a program of respiratory care education which is accredited by the ~~committee~~ commission on accreditation of allied health educational programs, or the committee's commission's successor organization.
3. "Certification examination" means the entry level examination for respiratory ~~therapy technicians~~ therapists administered by the national board for respiratory care.
4. "Certified respiratory ~~care practitioner~~ therapist" means a person licensed by the board to practice respiratory care under the direction or supervision of a physician or registered respiratory ~~care practitioner~~ therapist.
5. "National board for respiratory care" means the body issuing credentials for the respiratory care profession, or the board's successor organization.
6. "Registered respiratory ~~care practitioner~~ therapist" means a person licensed by the board to practice respiratory care.
7. "Registry examination" means the advanced level examination for respiratory therapists administered by the national board for respiratory care.
8. "Respiratory care" means the health specialty involving the treatment, management, control, and care of patients with deficiencies and abnormalities of the cardiorespiratory systems. Respiratory care is implemented on an order from a licensed physician, and includes the use of medical gases, air and oxygen administering apparatuses, environmental control systems, humidification and aerosols, drugs and medications, apparatuses for cardiorespiratory support and control,

postural drainage, chest percussion and vibration and breathing exercises, ~~respiratory~~ pulmonary rehabilitation, assistance with cardiopulmonary resuscitation, maintenance of natural and ~~mechanical~~ artificial airways, and insertion ~~and maintenance~~ of artificial airways. The term also includes testing techniques to assist in diagnosis, monitoring, treatment, and research, including the measurement of cardiorespiratory volumes, pressures and flows, and the drawing and analyzing of samples of arterial, capillary, and venous blood.

9. "Respiratory therapist" means a certified respiratory therapist or a registered respiratory therapist.
10. "Respiratory therapy" means respiratory care.
40. ~~11.~~ 11. "Temporary respiratory ~~care practitioner~~ therapist" means any individual who is ~~enrolled in or~~ has successfully completed a bona fide respiratory care training program and is licensed by the board to practice respiratory care under the supervision or direction of either a physician, certified respiratory ~~care practitioner~~ therapist, or registered respiratory ~~care practitioner~~ therapist.

SECTION 2. AMENDMENT. Section 43-42-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-42-02. State board of respiratory care.

1. The state board of respiratory care is responsible for the enforcement and administration of this chapter and for the adoption of any rules necessary to govern the practice of respiratory care in this state.
2. The board consists of seven members appointed by the governor. ~~Two~~ Four members must be ~~registered respiratory care practitioners and two members must be certified respiratory care practitioners therapists,~~ chosen from a list of ~~four registered~~ eight ~~respiratory care practitioners and four certified respiratory care practitioners therapists~~ supplied to the governor by the North Dakota society for respiratory care. One member must be a physician chosen from a list of two physicians supplied to the governor by the North Dakota medical association. The governor shall appoint two members to be representatives of the general public. Members are appointed for terms of three years. Each member holds office until the member's successor is duly appointed and qualified. A vacancy in the office of any member may be filled for the unexpired term only. No member may serve more than two successive complete terms.
3. The board shall annually select a chairman from among its members. The board shall meet at least twice each year and also shall meet upon the call of the chairman.
4. ~~The board shall consult with the North Dakota society for respiratory care before adopting any rules.~~

SECTION 3. AMENDMENT. Section 43-42-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-42-03. Respiratory ~~care practitioner~~ therapist licensing - Fees.

1. The board shall license as a registered respiratory ~~care practitioner~~ therapist any applicant whom the board determines to be qualified to perform the duties of a registered respiratory ~~care practitioner~~ therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the registry examination. The board shall establish fees not in excess of ~~fifty one hundred~~ fifty one hundred dollars for the issuance and renewal of a registered respiratory ~~care practitioner~~ therapist license.
2. The board shall license as a certified respiratory ~~care practitioner~~ therapist any applicant whom the board determines to be qualified to perform the duties of a certified respiratory ~~care practitioner~~ therapist. In making this determination, the board shall require evidence that the applicant has successfully completed a bona fide respiratory care training program and has passed the certification examination. The board shall establish fees not in excess of ~~thirty-five seventy~~ thirty-five seventy dollars for the issuance and renewal of a certified respiratory ~~care practitioner~~ therapist license.
3. The board shall license as a temporary respiratory ~~care practitioner~~ therapist any applicant whom the board determines to be qualified to perform duties as a temporary respiratory ~~care practitioner~~ therapist. In making this determination, the board shall require evidence that the applicant ~~is enrolled in or~~ has successfully completed a bona fide respiratory care training program. The board shall establish fees not in excess of ~~thirty-five seventy~~ thirty-five seventy dollars for the issuance ~~and renewal~~ of a temporary respiratory ~~care practitioner~~ therapist license.
4. The board may assess a late fee not in excess of twenty-five dollars for all license renewal applications that are postmarked after December thirty-first of the year prior to the year of renewal.
5. The board shall refuse to license any applicant or shall suspend or revoke any license after proper notice and a hearing, if the applicant:
 - a. Is not qualified or competent to perform the duties of a registered respiratory ~~care practitioner~~ therapist, a certified respiratory ~~care practitioner~~ therapist, or a temporary respiratory ~~care practitioner~~ therapist.
 - b. Has attempted to obtain or has obtained licensure under this chapter by fraud or material misrepresentation.
 - c. Has been found ~~guilty~~ by the board ~~of gross negligence to have been grossly negligent~~ as a registered respiratory ~~care practitioner~~ therapist, certified respiratory ~~care practitioner~~ therapist, or a temporary respiratory ~~care practitioner~~ therapist.
 - d. Has engaged in conduct as a registered respiratory ~~care practitioner~~ therapist, certified respiratory ~~care practitioner~~ therapist, or a temporary respiratory ~~care practitioner~~ therapist.

- which is unethical, unprofessional, or detrimental to the ~~benefit~~ health of the public.
- e. Has failed to demonstrate satisfactory completion of such continuing courses of study in respiratory care as the board may require.
 - f. Has been convicted or adjudged guilty of an offense, as defined by section 12.1-01-04, determined by the board to have a direct bearing upon that individual's ability to practice respiratory care and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
 - g. Is habitually drunk or is addicted to the use of a controlled substance as defined in chapter 19-03.1.
 - h. Has been declared mentally incompetent by a court of competent jurisdiction, and who has not thereafter been lawfully declared competent.
6. The board may impose a fee on any person subject to regulation under this chapter to reimburse the board for all or part of the costs of administrative actions resulting in disciplinary action, which are not reversed on appeal, including the amount paid by the board for services from the office of administrative hearings, attorney's fees, court costs, witness fees, staff time, and other expenses.
- ~~5.~~ 7. Licenses issued under this chapter expire annually, but may be renewed upon application to the board and payment of the annual renewal fee established by the board. Licenses which have expired, been suspended, or been revoked may be renewed or reissued upon satisfaction of any conditions that may be established by the board, and after payment of a fee established by the board. Temporary licenses may not be renewed.
- ~~6.~~ 8. The board shall require as a condition of renewal and relicensure that the applicant demonstrate satisfactory completion of continuing courses of study in respiratory care.

SECTION 4. AMENDMENT. Section 43-42-04 of the North Dakota Century Code is amended and reenacted as follows:

43-42-04. Respiratory care practice. The practice of respiratory care may be performed in hospitals, as ambulatory or in-home care, and in other settings where respiratory care is provided in accordance with a prescription of a licensed physician. In addition, respiratory care may be provided during the transportation of a patient, and under any circumstances where an epidemic or public disaster necessitates respiratory care. No person may practice, nor represent oneself as able to practice, as a registered respiratory ~~care practitioner~~ therapist without being licensed as a registered respiratory ~~care practitioner~~ therapist, or as a certified respiratory ~~care practitioner~~ therapist without being licensed as a certified respiratory ~~care practitioner~~ therapist, in accordance with this chapter.

SECTION 5. AMENDMENT. Section 43-42-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

43-42-05. Application of chapter.

1. This chapter does not prohibit a person enrolled in a bona fide respiratory care training program from performing those duties essential for completion of a student's clinical service; provided, that the duties are performed under the supervision or direction of a physician or registered respiratory ~~care practitioner~~ therapist and the person is identified as a "student respiratory ~~care practitioner~~ therapist".
2. A graduate of a bona fide respiratory care training program, who has applied for licensure under this chapter may practice respiratory care under the supervision or direction of a physician or a registered or certified respiratory ~~care practitioner~~ therapist; provided, that the graduate holds a temporary respiratory ~~care practitioner's~~ therapist's license and is identified as a "graduate respiratory ~~care practitioner~~ therapist". An applicant shall take ~~one of the next three immediately available~~ entry level certification ~~examinations~~ examination within six months following eligibility. Failure to pass any examination that is taken results in termination of the privileges provided under this subsection.
3. If examinations prepared by the national board for respiratory care are no longer available or become unacceptable to the board, the board may develop, approve, and use examinations for the licensure of registered respiratory ~~care practitioners~~ therapists and certified respiratory ~~care practitioners~~ therapists.
4. This chapter does not prevent a licensed and qualified member of another health care profession from performing any of the duties of a registered respiratory ~~care practitioner~~ therapist or a certified respiratory ~~care practitioner~~ therapist that are consistent with the accepted standards of that person's profession, provided the person is not represented as a registered respiratory ~~care practitioner~~ therapist or certified respiratory ~~care practitioner~~ therapist.
5. This chapter does not prohibit self-care by a patient or the gratuitous care by a friend or member of the family who does not represent or hold oneself out to be a registered or certified respiratory ~~care practitioner~~ therapist.
6. This chapter does not prohibit a ~~registered or certified~~ respiratory ~~care practitioner~~ therapist from performing advances in the art or techniques of respiratory care learned through formal or specialized training.

SECTION 6. AMENDMENT. Section 43-42-06 of the North Dakota Century Code is amended and reenacted as follows:

43-42-06. Reciprocity. An applicant for licensure under this chapter may be granted a license upon satisfactory proof to the board that the applicant is licensed to practice respiratory care under the laws of another state which impose substantially the same requirements as this chapter, and upon payment of the annual license fee.

SECTION 7. AMENDMENT. Subsection 1 of section 43-46-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Board" means:

- a. The board of registry in podiatry;
- b. The state board of chiropractic examiners;
- c. The state board of funeral service;
- d. The North Dakota board of nursing;
- e. The North Dakota state board of optometry;
- f. The state board of pharmacy;
- g. The state board of medical examiners;
- h. The North Dakota board of massage;
- i. The state examining committee for physical therapists;
- j. The state board of dental examiners;
- k. The state board of veterinary medical examiners;
- l. The North Dakota state board of psychologist examiners;
- m. The board for licensing hearing aid dealers and fitters;
- n. The North Dakota state board of examiners for nursing home administrators;
- o. The state board of examiners of audiology and speech pathology;
- p. The North Dakota board of athletic trainers;
- q. The board of occupational therapy practice;
- r. The North Dakota board of social work examiners;
- s. The North Dakota ~~respiratory care examining~~ state board of respiratory care;
- t. The board of dietetic practice;
- u. The board of addiction counseling examiners; and
- v. Any health care related board granted licensing authority by the legislative assembly after July 1, 1989.

Approved April 17, 2001
Filed April 17, 2001

CHAPTER 390

SENATE BILL NO. 2115

(Industry, Business and Labor Committee)
(At the request of the Attorney General)

REGULATED OCCUPATION OR PROFESSION PRACTICE

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the practice of a regulated occupation or profession.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context indicates otherwise:

1. "Board" means a board, commission, or other agency of state government created or identified in this title to regulate a particular occupation or profession, except for the:
 - a. State board of accountancy;
 - b. State electrical board;
 - c. North Dakota real estate appraiser qualifications and ethics board;
 - d. State real estate commission;
 - e. Secretary of state with respect to contractor licensing;
 - f. State board of medical examiners; and
 - g. State board of dental examiners.

"Board" also includes any agency of state government which is created or identified outside this title to regulate a particular occupation or profession if the agency elects, by administrative rule, to invoke the authority in this chapter.

2. "Foreign practitioner" means an individual who currently holds and maintains a license in good standing to engage in an occupation or profession in a state or jurisdiction other than this state and who is not the subject of a pending disciplinary action in any state or jurisdiction.
3. "Good standing" means a foreign practitioner holds a current license that is not issued on a temporary or restricted basis, is not encumbered or on probation, and is not suspended or revoked.
4. "License" means a license, certificate, permit, or similar authorization to practice an occupation or profession which is issued by a government

agency in another state or jurisdiction that imposes requirements for obtaining and maintaining a license which are at least as stringent as the requirements imposed in this state to obtain and maintain a license to practice the same profession or occupation.

5. "Occupation or profession" means activity for which a license is required from a board or similar activity for which a license is required in another state or jurisdiction.

Location of practice of an occupation or profession. The provision of services to an individual in this state which fall within the standard of practice of a profession or occupation regulated by a board, regardless of the means by which the services are provided or the physical location of the person providing those services, constitutes the practice of that occupation or profession in this state and is subject to regulation by the appropriate board in this state.

Indirect practice without a license.

1. A foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the appropriate board if the services are provided through consultation with the person licensed by the board and if the foreign practitioner has no direct communication in this state with the individual receiving the services except in the presence of the individual who is licensed by the board. Both the foreign practitioner and the individual licensed by the board are responsible for the services provided under this subsection.
2. A foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the appropriate board if the services are provided through a remote means and are a continuation of an existing relationship between the foreign practitioner and the individual receiving the services which was formed in the state or jurisdiction in which the foreign practitioner is currently licensed.

Emergency practice without a license. Upon prior written notice to the appropriate board, a foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by this title without obtaining a license from the board, if the services are provided for a period of time not to exceed sixty consecutive days in a calendar year and are provided in response to a disaster declared by the appropriate authority in this state. The notice provided by a foreign practitioner under this section must include verified documentation from the appropriate licensing authority which identifies the requirements for licensure in that jurisdiction and which confirms that the practitioner is licensed and in good standing in that jurisdiction and any other information requested by the board. A notice provided under this section, if accompanied by sufficient documentation, is deemed to be accepted unless denied by the board. If a notice under this section is denied, the foreign practitioner immediately shall cease providing services under this section and may not resume providing services until after a successful appeal of the board's decision under chapter 28-32 or after an application for privileges under this section is reviewed and approved by the board.

Limited practice without a license. Upon prior written application to the appropriate board, a foreign practitioner may provide services in this state which fall within the scope of practice designated by the foreign practitioner's license and by

this title without obtaining a license from the board if the services are provided for no more than thirty full or partial days per year. The one-year period commences on the date the written application is approved by the board. An application from a foreign practitioner under this section must include verified documentation from the appropriate licensing authority which identifies the requirements for licensure in that jurisdiction and which confirms that the practitioner is licensed and in good standing in that jurisdiction and any other information requested by the board. The board may require payment of a fee of twenty-five dollars or other fee established by the board by administrative rule, not to exceed the higher of twenty-five dollars or one-tenth of the fee for an annual license from the board, as a condition of approving an application under this section.

Licensure without examination. A board may issue a license, without examination, to any foreign practitioner who has practiced the occupation or profession for which the practitioner is licensed at least two years prior to submitting the application to the board, or for any shorter period of time provided in this title or established by the board by administrative rule, and who meets the other requirements for a license. A board is not prohibited from issuing a license under this section to a foreign practitioner if the state or jurisdiction in which the individual is licensed does not extend similar privileges to individuals licensed in this state. This section does not prohibit a board from requiring a foreign practitioner to take an examination regarding the laws of this state and the rules established by the board.

License compacts. A board may establish, by administrative rule, conditions and procedures for foreign practitioners to practice in this state pursuant to written compacts or agreements between the board and one or more other states or jurisdictions or pursuant to any other method of license recognition that ensures the health, safety, and welfare of the public. Any compact or agreement by a board does not become binding on this state until implemented by administrative rules under this section.

Discipline. A foreign practitioner's authority to practice an occupation or profession under this chapter is subject to denial, probation, suspension, revocation, or other form of discipline for the same grounds as individuals licensed by the appropriate board in this state. In addition to other grounds for disciplinary action authorized by law, a person who holds a license issued by a board may be subject to disciplinary action in this state for:

1. Failing to adequately review services provided by a foreign practitioner under this chapter;
2. Unauthorized practice of the person's occupation or profession in another state or jurisdiction, including the delivery of services by a licenseholder in this state to a recipient of services in another state or jurisdiction;
3. Acts occurring in another state or jurisdiction which could subject the person to disciplinary action if those acts occurred in this state; or
4. Acts occurring in another state or jurisdiction which could subject the person to disciplinary action if the person held a license in that state or jurisdiction.

A disciplinary action under this section against a foreign practitioner is subject to chapter 28-32.

Jurisdiction - Service of process. A foreign practitioner who provides services in this state without a license as permitted in this chapter shall be deemed to have consented to the jurisdiction of this state and the appropriate board, to be bound by the laws of this state and the rules established by the appropriate board, and to have appointed the secretary of state as the foreign practitioner's agent upon whom process may be served in any action or proceeding against the practitioner arising out of the practitioner's activities in this state.

Service on the secretary of state of any process, notice, or demand is deemed personal service upon the foreign practitioner and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, with the filing fee of twenty-five dollars. A member of the legislative assembly or a state or county officer may not be charged for filing any process, notice, or demand for service. The secretary of state shall immediately forward a copy of the process, notice, or demand by registered mail, addressed to the foreign practitioner at the address provided by the filer.

Application with other laws. This chapter applies notwithstanding any other limitation in state law on the practice of an occupation or profession. This chapter supplements and does not repeal the authority provided to each board. Nothing in this chapter prohibits a board from imposing conditions on foreign practitioners by administrative rule or compact which are more restrictive than those imposed in this chapter, if those restrictions are enacted to ensure the health, safety, and welfare of the public. Rules under this section may be adopted as emergency rules under chapter 28-32. Nothing in this chapter alters the scope of practice of a particular occupation or profession as defined by law.

Approved March 22, 2001
Filed March 22, 2001

CHAPTER 391

HOUSE BILL NO. 1304 (Representatives Maragos, Brekke) (Senator Traynor)

INTERPRETING PRACTICE

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the practice of interpreting for the deaf and hard-of-hearing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Consumer" means an individual who is deaf, deaf-blind, speech-impaired, hard-of-hearing, or who requires special communication techniques in order to communicate.
2. "Interpreter" means an individual who engages in the practice of interpreting.
3. "Interpreting" means the translating or transliterating of English concepts to any necessary specialized vocabulary used by a consumer or translating of a consumer's specialized vocabulary to English concepts. Necessary specialized vocabularies include American sign language, English-based sign language, and oral interpreting.
4. "Nationally recognized certification" means certification granted by a national organization that is based on a skills assessment of the applicant. These organizations include the registry of interpreters for the deaf and the national association of the deaf.

Practice of interpreting. An individual may not practice or represent oneself as an interpreter for deaf, deaf-blind, speech-impaired, or hard-of-hearing individuals in the state unless the individual holds a valid nationally recognized certification. However, an individual who was practicing as an interpreter in this state before August 1, 2001, has until July 31, 2003, to meet the certification requirement under this section.

Exceptions. This chapter does not prevent or restrict:

1. A nonresident interpreter working in this state not more than nineteen days per year.
2. An interpreter working at a religious activity.
3. An interpreter working as a volunteer without compensation.

4. An interpreter working in an emergency. An emergency is a situation in which the consumer decides that the length of time needed to obtain a licensed interpreter is likely to cause injury or loss to the consumer.
5. The activities and services of an interpreter intern or student-in-training enrolled in a program of study in interpreting at an accredited institution of higher learning; interpreting under the supervision of a licensed interpreter as part of a supervised program; and identified as an interpreter intern or student-in-training.
6. An individual using sign language or a manual communication system as a means of communication with or on behalf of a family member, a deaf individual, a deaf-blind individual, a speech-impaired individual, or hard-of-hearing individual who has specifically requested that use by that individual.
7. A communication made as a reasonable accommodation for the employment of a deaf, deaf-blind, speech-impaired, or hard-of-hearing individual.
8. A communication with a deaf, deaf-blind, speech-impaired, or hard-of-hearing individual who could not communicate using American sign language or English-based sign language.

Approved April 5, 2001
Filed April 5, 2001

OFFICES AND OFFICERS

CHAPTER 392

HOUSE BILL NO. 1353

(Representatives Meier, DeKrey, Delmore, Haas, Weisz)
(Senator Lee)

OATH FILING AND FEES

AN ACT to create and enact a new section to chapter 44-01 of the North Dakota Century Code, relating to filing of oaths of office; and to amend and reenact sections 44-01-05, 44-05-04, and 54-09-04 of the North Dakota Century Code, relating to oaths of civil officers and fees imposed by the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-01 of the North Dakota Century Code is created and enacted as follows:

Failure to file oath. The appointment of any civil officer may be rescinded by the appointing authority if the appointed civil officer fails to file an oath of office at the place of filing required by section 44-05-04.

SECTION 2. AMENDMENT. Section 44-01-05 of the North Dakota Century Code is amended and reenacted as follows:

44-01-05. Oath of civil officers. Each civil officer in this state before entering upon the duties of ~~his~~ that individual's office shall take and subscribe the oath prescribed in section 4 of article XI of the Constitution of North Dakota. ~~Such~~ The oath must be endorsed upon the back of, or attached to, the commission, appointment, or certificate of election. The term civil officer includes every elected official; any individual appointed by the governor; appointed member of any state authority, board, bureau, commission, and council; and the appointed head of any state agency and agency division, whether the individual serves with or without compensation. Except for an individual appointed to fill a vacancy existing in the legislative assembly, the term does not include any individual receiving a legislative appointment. For purposes of this chapter and chapter 44-05, the term civil officer has the same meaning as public officer.

SECTION 3. AMENDMENT. Section 44-05-04 of the North Dakota Century Code is amended and reenacted as follows:

44-05-04. Place of filing oath of office. Unless otherwise provided by law, any civil or public officer required by section 44-01-05 or any other provision of law to take an oath of office must file the oath as follows:

1. If a state official or member of a state board, with the secretary of state.
2. If a county official or member of a county board, with the county auditor.

3. If a city official or member of a city board, with the city auditor.
4. If a member of a district or political subdivision that is larger than a county, with the secretary of state.

SECTION 4. AMENDMENT. Section 54-09-04 of the 1999 Supplement to 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 any other document signed by the governor, except a commission, and attested by the secretary of state, five dollars.~~
5. 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.

- ~~6.~~ 5. For filing any paper not otherwise provided for, ten dollars.
- ~~7.~~ 6. For filing utility property transfers, five dollars, and issuing a certificate of filing, five dollars.
- ~~8.~~ 7. For sending a copy of a document by electronic transmission, one dollar for each page.
- ~~9.~~ 8. For filing any process, notice, or demand for service, twenty dollars.
- ~~10.~~ 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 or 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 ~~person's~~ 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.

Approved March 27, 2001
Filed March 27, 2001

CHAPTER 393

SENATE BILL NO. 2117

(Judiciary Committee)
(At the request of the Attorney General)

OPEN RECORDS AND OPEN MEETINGS

AN ACT to create and enact a new subsection to section 43-17-32.1, a new subsection to section 44-04-17.1, a new subsection to section 44-04-18, a new subsection to section 44-04-18.7, and section 44-04-21.3 of the North Dakota Century Code, relating to open records and open meetings; to amend and reenact subsection 1 of section 6-09-35, subsections 10, 12, and 13 of section 44-04-17.1, subsections 5 and 7 of section 44-04-18, subsection 1 of section 44-04-18.1, subsection 6 of section 44-04-19.1, subsection 5 of section 44-04-19.2, and subsections 1 and 3 of section 44-04-21.2 of the North Dakota Century Code, relating to open records and open meetings; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁵ **SECTION 1. AMENDMENT.** Subsection 1 of section 6-09-35 of the North Dakota Century Code is amended and reenacted as follows:

1. Commercial or financial information of a customer, whether obtained directly or indirectly, except for routine credit inquiries or unless required by due legal process. As used in this subsection, "customer" means any person who has transacted or is transacting business with, or has used or is using the services of, the Bank of North Dakota, or for whom the Bank of North Dakota has acted as a fiduciary with respect to trust property.

¹⁸⁶ **SECTION 2.** A new subsection to section 43-17-32.1 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Any medical record of a patient, or other document containing personal information about a patient, which is obtained by the board is an exempt record as defined in section 44-04-17.1.

SECTION 3. AMENDMENT. Subsections 10, 12, and 13 of section 44-04-17.1 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

10. "Political subdivision" includes any county or city, regardless of the adoption of any home rule charter, and any airport authority, township, school district, park district, rural fire protection district, water resource

¹⁸⁵ Section 6-09-35 was also amended by section 29 of Senate Bill No. 2164, chapter 88.

¹⁸⁶ Section 43-17-32.1 was also amended by section 4 of Senate Bill No. 2163, chapter 378.

district, solid waste management authority, rural ambulance service district, irrigation district, hospital district, soil conservation district, recreation service district, railroad authority, or district health unit.

12. "Public entity" means all:
- a. Public or governmental bodies, boards, bureaus, commissions, or agencies of the state, including any entity created or recognized by the Constitution of North Dakota, state statute, or executive order of the governor or any task force or working group created by the individual in charge of a state agency or institution, to exercise public authority or perform a governmental function;
 - b. Public or governmental bodies, boards, bureaus, commissions, or agencies of any political subdivision of the state and any entity created or recognized by the Constitution of North Dakota, state statute, executive order of the governor, resolution, ordinance, rule, bylaw, or executive order of the chief executive authority of a political subdivision of the state to exercise public authority or perform a governmental function; and
 - c. Organizations or agencies supported in whole or in part by public funds, or expending public funds.
13. "Public funds" means ~~funds~~ cash and other assets with more than minimal value received from the state or any political subdivision of the state.

SECTION 4. A new subsection to section 44-04-17.1 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

"Task force or working group" means a group of individuals who have been formally appointed and delegated to meet as a group to assist, advise, or act on behalf of the individual in charge of a state agency or institution when a majority of the members of the group are not employees of the agency or institution.

SECTION 5. AMENDMENT. Subsections 5 and 7 of section 44-04-18 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. Any request under this section for records in the possession of a public entity by a party to a criminal or civil action or ~~adverse adversarial~~ administrative proceeding ~~involving that~~ in which the public entity is a party, or by an agent of the party, must comply with applicable discovery rules and be made to the attorney representing that entity in the criminal or civil action or ~~adverse adversarial~~ administrative proceeding. The public entity may deny a request from a party or an agent of a party under this subsection if the request seeks records that are privileged under applicable discovery rules.
7. This section is violated when a person's right to review or receive a copy of a record that is not exempt or confidential is denied or unreasonably delayed or when a fee is charged in excess of the amount authorized in subsection 2.

SECTION 6. A new subsection to section 44-04-18 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

A disclosure of a requested record under this section is not a waiver of any copyright held by the public entity in the requested record or of any applicable evidentiary privilege.

SECTION 7. AMENDMENT. Subsection 1 of section 44-04-18.1 of the 1999 Supplement to 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 may not be released without the written consent of the employee. As used in this section, the term "public employee" includes any ~~person~~ individual who has applied for employment, is employed, or has been employed by a public entity.

SECTION 8. A new subsection to section 44-04-18.7 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

A computerized index created by a criminal justice agency of names included in criminal files, whether active or inactive, is an exempt record.

SECTION 9. AMENDMENT. Subsection 6 of section 44-04-19.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Following the final completion of the civil or criminal litigation or the adversarial administrative proceeding, including the exhaustion of all appellate remedies, attorney work product must be made available for public disclosure by the public entity, unless another exception to section ~~44-04-19~~ 44-04-18 applies or if disclosure would have an adverse fiscal effect on the conduct or settlement of other pending or reasonably predictable civil or criminal litigation or adversarial administrative proceedings.

SECTION 10. AMENDMENT. Subsection 5 of section 44-04-19.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. All meetings of the governing body of a public entity that are not open to the public must be recorded electronically or on audiotape or videotape. The recording must be disclosed pursuant to court order under subsection 2 of section 44-04-18.11 or to the attorney general for the purpose of administrative review under section 44-04-21.1. The attorney general may not disclose to the public any recording received under this subsection and must return the recording to the governing body upon completion of the administrative review. The recording may be disclosed upon majority vote of the governing body unless the executive session was required to be confidential. Disclosure of the recording by a public servant except as provided in this subsection is a violation of section 12.1-13-01. All recordings under this subsection must be retained for a minimum of six months after the executive session that is the subject of the recording.

SECTION 11. AMENDMENT. Subsections 1 and 3 of section 44-04-21.2 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 ~~is not a violation of section 12.1-11-06, but~~ may be the subject of a civil action brought by an interested person or entity. For an alleged violation of section 44-04-18, the complaint must be accompanied by a dated, written request for the requested record. If a court finds that any of these sections have been violated by a public entity, the court may award declaratory relief, an injunction, a writ of prohibition or mandamus, costs, disbursements, and reasonable attorney's fees against the entity. For an intentional or knowing violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21, the court may also award damages in an amount equal to one thousand dollars or actual damages caused by the violation, whichever is greater. An action under this subsection must be commenced within sixty days of the date the person knew or should have known of the violation or within thirty days of issuance of an attorney general's opinion on the alleged violation, whichever is later. Venue for an action is in the county where the entity has its principal office or, if the entity does not have a principal office within the state, in Burleigh County.

3. The remedies provided in this section are not available if a violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 has been corrected before a civil action is filed and no person has been prejudiced or harmed by the delay. An interested person or entity may not file a civil action under this section seeking attorney's fees or damages, or both, until at least three working days after providing notice of the alleged violation to the chief administrative officer for the public entity. This subsection does not apply if the attorney general has found under section 44-04-21.1, on a prior occasion, that the public entity has violated section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21.

SECTION 12. Section 44-04-21.3 of the North Dakota Century Code is created and enacted as follows:

44-04-21.3. Attorney general referral and criminal penalties. The attorney general may refer to the appropriate state's attorney any public servant as defined in section 12.1-01-04 who has been found in more than one opinion issued pursuant to section 44-04-21.1 to have violated section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21. A public servant as defined in section 12.1-01-04 who knowingly violates section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 is guilty of an offense under section 12.1-11-06.

Approved April 12, 2001
Filed April 12, 2001

CHAPTER 394

SENATE BILL NO. 2179

(Senators Traynor, Lee, Watne)
(Representatives Delmore, Rennerfeldt)

NOTARY AUTHORITY AND ACTS

AN ACT to create and enact a new section to chapter 47-19 of the North Dakota Century Code, relating to the authority of North Dakota notaries to act in other states; to amend and reenact section 44-06-01 of the North Dakota Century Code, relating to the performance of notarial acts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-06-01 of the North Dakota Century Code is amended and reenacted as follows:

44-06-01. Appointment and qualification of notaries public. The secretary of state shall appoint notaries public. A notary holds office for six years unless sooner removed by the secretary of state. Each notary may administer oaths and perform all other duties required by law. Notwithstanding any other provision of law, a notary public may perform any notarial act as defined in section 47-19-14.1 outside the state as provided in section 2 of this Act. A notary public must have the qualifications of an elector as to age and residence or must reside in a county that borders this state and which is in a state that extends reciprocity to a notary public who resides in a border county of this state. If the person resides in a county bordering this state, that person must designate the secretary of state as the agent for service of process, for all purposes relating to notarial acts, including the receipt of correspondence relating to notarial acts.

SECTION 2. A new section to chapter 47-19 of the North Dakota Century Code is created and enacted as follows:

Authority of North Dakota notaries in other states. A North Dakota notary may perform a notarial act in another state if that state recognizes the notary's authority within that state.

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

Approved March 22, 2001
Filed March 22, 2001

CHAPTER 395

SENATE BILL NO. 2255

(Senator Traynor)

NOTARY ADDRESS AND NAME CHANGE

AN ACT to amend and reenact sections 44-06-02, 44-06-04.1, and 44-06-12 and subsection 4 of section 44-06-13.1 of the North Dakota Century Code, relating to notary public address and name changes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-06-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-06-02. Commission - Record - Fee - Notice. The secretary of state shall issue a commission to each notary public appointed by the secretary of state ~~which must be posted by such.~~ The notary shall post the commission in a conspicuous place in the notary's office. The secretary of state shall collect twenty-five dollars for the issuance of such the commission. ~~Such sum must be paid into the state treasury and credited to~~ The secretary of state shall remit all fees collected under this section to the state treasurer for deposit in the general fund. The secretary of state shall keep a record of ~~such~~ appointments and the date of the expiration of the ~~same and~~ appointments. The secretary of state shall notify each notary public by mail at least thirty days before the expiration of the notary public's term of the date upon which the notary public's commission will expire. ~~Such~~ The notice must be addressed to ~~such the~~ notary public at the last known place of residence. Each notary public issued a commission shall notify the secretary of state by mail within ~~thirty~~ sixty days of any change of address. If a notary fails to notify the secretary of state within sixty days of a change of address, the secretary of state may impose a late fee in the amount of ten dollars. The notary shall pay any late fee imposed by the secretary of state before the renewal of the notary's commission.

SECTION 2. AMENDMENT. Section 44-06-04.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-06-04.1. Name change. A notary who has legally changed the notary's name shall submit to the secretary of state a rider to the notary's surety bond stating both the old and new names, the effective date of the new name, and a ten dollar fee within ~~thirty~~ sixty days of the name change. Upon receipt of the rider and fee the secretary of state shall issue a certificate of authorization that a notary public may use to obtain a new seal. Once the authorization is on file the secretary of state shall issue a commission with the notary's new name. After notification to the secretary of state of the name change and until a new seal is obtained, the notary may continue to use the old seal but must sign any notarial certificate substantially as follows:

Notary public North Dakota
Formerly known and commissioned as

My commission expires

Notary Seal

SECTION 3. AMENDMENT. Section 44-06-12 of the North Dakota Century Code is amended and reenacted as follows:

44-06-12. Notary public commission - Date of expiration. Every notary public taking an acknowledgment to any instrument, immediately following ~~his~~ the notary's signature to the jurat or certificates of acknowledgment, shall legibly print, stamp, or type ~~his~~ the notary's name and ~~shall~~ endorse the date of the expiration of ~~such~~ the commission. ~~Such~~ The endorsement may 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 _____, ~~19~~_____.

¹⁸⁷ **SECTION 4. AMENDMENT.** Subsection 4 of section 44-06-13.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. ~~The~~ 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.

Approved March 22, 2001
 Filed March 22, 2001

¹⁸⁷ Section 44-06-13.1 was also amended by section 1 of House Bill No. 1252, chapter 396.

CHAPTER 396

HOUSE BILL NO. 1252

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

NOTARIAL CERTIFICATES AND DOCUMENT RECORDING

AN ACT to create and enact a new subsection to section 44-06-13.1 of the North Dakota Century Code, relating to signatures on notarial certificates; and to amend and reenact section 47-19-03 of the North Dakota Century Code, relating to documents entitled to recording.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁸ **SECTION 1.** A new subsection to section 44-06-13.1 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

The signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law.

SECTION 2. AMENDMENT. Section 47-19-03 of the North Dakota Century Code is amended and reenacted as follows:

47-19-03. Prerequisites to recording instruments. Before an instrument can be recorded, unless it belongs to a class provided for in section 47-19-02 or 47-19-40, its execution must be established:

1. If executed by an individual, by acknowledgment by the person executing the same;
2. If executed by a corporation or limited liability company, by execution and acknowledgment by the person or persons authorized to execute instruments under section 47-10-05.1;
3. By proof by a subscribing witness as is provided by section 47-19-22; and
4. By proof of the handwriting of the person executing an instrument and of a subscribing witness thereto as is prescribed by sections 47-19-23 and 47-19-24 and filing of the original instrument in the proper office there to remain for public inspection.

¹⁸⁸ Section 44-06-13.1 was also amended by section 4 of Senate Bill No. 2255, chapter 395.

Except as otherwise provided by the law of this state or the law of the state in which the instrument or document was executed, before an instrument may be recorded, the document and any acknowledgment must be executed with an original signature.

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 397

HOUSE BILL NO. 1123

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

BID PREFERENCES AND SPECIFICATIONS

AN ACT to amend and reenact section 44-08-01 of the North Dakota Century Code, relating to preference to North Dakota bidders for services and specifying name brand merchandise.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-08-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

44-08-01. Preference to North Dakota bidders, sellers, and contractors.

1. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in purchasing any goods, merchandise, supplies, or equipment of any kind, or contracting to build or repair any building, structure, road, or other real property, shall give preference to bidders, sellers, or contractors resident in North Dakota. The preference must be equal to the preference given or required by the state of the nonresident bidder, seller, or contractor. ~~In specifying or purchasing goods, merchandise, supplies, or equipment to be purchased, the entity or board may not specify any trademarked or copyrighted brand or name, nor the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, where the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit.~~
2. A state entity authorized to accept bids shall give preference to a resident North Dakota bidder when accepting bids for the provision of professional services, including research and consulting services. The state entity shall award the bid to the resident North Dakota bidder if the bid of the resident North Dakota bidder is equal to or less than the low bid of a preference must be equal to the preference given or required by the state of the nonresident bidder and the resident North Dakota bidder has an acceptable performance history and meets the minimum requirements specified in the bid solicitation.
3. The office of management and budget, any other state entity, and the governing body of any political subdivision of the state in specifying or purchasing any goods, merchandise, supplies, or equipment, may not specify any trademarked or copyrighted brand or name, nor the product of any one manufacturer, nor any patented product, apparatus, device, or equipment, when the same will prevent proper competition, unless bidders also are asked for bids or offers upon other articles of like nature, utility, and merit. When it is advantageous that the purchase be of a particular brand of product or products of a particular manufacturer to the exclusion of competitive brands or manufacturers, the purchasing

board or entity must document those circumstances and provide written justification for the proprietary specification or purchase. The purchasing board or entity shall procure the proprietary product through a competitive process unless the needed product is available exclusively from one source of supply or other circumstances exist under which competition can be waived.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 398

SENATE BILL NO. 2297

(Senators Grindberg, Krebsbach)

STATE LODGING REIMBURSEMENT

AN ACT to amend and reenact subsection 2 of section 44-08-04 of the North Dakota Century Code, relating to state officer and employee lodging reimbursement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁹ **SECTION 1. AMENDMENT.** Subsection 2 of section 44-08-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Expenses for travel within the state must be reimbursed at the following rates for each quarter of any twenty-four-hour period:
 - a. First quarter is from six a.m. to twelve noon and the sum must be four dollars. First quarter reimbursement may not be made if travel began after seven a.m.
 - b. Second quarter is from twelve noon to six p.m. and the sum must be six dollars.
 - c. Third quarter is from six p.m. to twelve midnight and the sum must be ten dollars.
 - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed ~~forty-two~~ forty-five dollars plus any additional applicable state or local taxes.

Approved April 17, 2001
Filed April 17, 2001

¹⁸⁹ Section 44-08-04 was also amended by section 1 of Senate Bill No. 2344, chapter 399.

CHAPTER 399

SENATE BILL NO. 2344 (Senator Krebsbach)

POLITICAL SUBDIVISION LODGING REIMBURSEMENT

AN ACT to amend and reenact subsection 2 of section 44-08-04 of the North Dakota Century Code, relating to lodging expenses of political subdivision elective or appointive officers, employees, representatives, or agents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁰ **SECTION 1. AMENDMENT.** Subsection 2 of section 44-08-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Expenses for travel within the state must be reimbursed at the following rates for each quarter of any twenty-four-hour period:
 - a. First quarter is from six a.m. to twelve noon and the sum must be four dollars. First quarter reimbursement may not be made if travel began after seven a.m.
 - b. Second quarter is from twelve noon to six p.m. and the sum must be six dollars.
 - c. Third quarter is from six p.m. to twelve midnight and the sum must be ten dollars.
 - d. Fourth quarter is from twelve midnight to six a.m. and the sum must be the actual lodging expenses not to exceed forty-two dollars plus any additional applicable state or local taxes. A political subdivision may reimburse an elective or appointive officer, employee, representative, or agent for actual lodging expenses.

Approved March 28, 2001
Filed March 28, 2001

¹⁹⁰ Section 44-08-04 was also amended by section 1 of Senate Bill No. 2297, chapter 398.

CHAPTER 400

HOUSE BILL NO. 1156

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

EMPLOYEE LODGING EXPENSE DIRECT BILLING

AN ACT to amend and reenact section 44-08-04.5 of the North Dakota Century Code, relating to the direct billing of employee lodging expenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-08-04.5 of the 1999 Supplement to 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.

Approved March 16, 2001
Filed March 16, 2001

PARTNERSHIPS

CHAPTER 401

HOUSE BILL NO. 1139

(Representatives Dosch, Ruby)
(At the request of the Secretary of State)

PARTNERSHIP FEES AND REGISTRATION

AN ACT to amend and reenact subsection 14 of section 45-10.1-15 and subsection 1 of section 45-10.1-52 of the North Dakota Century Code, relating to the foreign limited partnership amendment fee and registration filed with the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 14 of section 45-10.1-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14. Filing a certified statement of amendment of foreign limited partnership, ~~twenty-five~~ forty dollars.

SECTION 2. AMENDMENT. Subsection 1 of section 45-10.1-52 of the 1999 Supplement to 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 ~~and sworn to~~ 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 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 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.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 402

HOUSE BILL NO. 1422

(Representatives B. Thoreson, Dosch, Koppelman, Warner)
(Senators Andrist, O'Connell)

PARTNERSHIP FICTITIOUS AND TRADE NAMES

AN ACT to amend and reenact sections 45-11-01 and 47-25-01 of the North Dakota Century Code, relating to fictitious and trade names.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 45-11-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-11-01. Partnership - Use of fictitious partnership name.

1. As used in this section, "fictitious name" means a name assumed to identify a partnership and which does not include in its name:
 - a. The true name of each organizational partner;
 - b. The first name and surname of each partner; or
 - c. The surname of each partner, repeating a surname if more than one partner has the same surname.
2. Any partnership transacting business in this state under a fictitious name or under a designation that does not show the names of the persons interested as partners must file a fictitious name certificate with the secretary of state, together with a filing fee of twenty-five dollars. When a partnership has more than two members, an additional three dollars must be paid for each additional member not to exceed two hundred fifty dollars. A limited partnership or a foreign limited partnership transacting business under a name filed under chapter 45-10.1 and as provided in section 45-11-03 or a partnership transacting business under a name filed under section 45-13-05 is not required to file a fictitious name certificate under this section.
3. The fictitious name:
 - 4- a. May not contain the word "corporation", "company", "incorporated", "limited liability company", or "limited", or an abbreviation of any of those words. This subsection does not preclude the word "limited" from being used in conjunction with the word "partnership".
 - 2- b. May not be the same as or deceptively similar to any corporate name, limited liability company name, trade name, partnership name on file with the secretary of state, limited partnership name, foreign limited partnership name, or fictitious name certificate on file with the secretary of state, unless there is filed with the fictitious name certificate a written consent of the holder of the similar name to use the proposed name and a filing fee of ten dollars.

SECTION 2. AMENDMENT. Section 47-25-01 of the North Dakota Century Code is amended and reenacted as follows:

47-25-01. Trade name defined - Registration. ~~Every name under which any person or organization shall hereafter do or transact any business in this state, other than the true name of such person or organization, is hereby declared to be a "trade name".~~

1. a. As used in this section, a "trade name" is a name assumed to identify the business or activities of an individual or organization and which does not include in the name:
 - (1) The true name of the organization using the name;
 - (2) The first name and surname of each individual using the business name; or
 - (3) The surname of each individual, repeating a surname if more than one owner has the same surname.
- b. A name assumed under paragraph 3 or a name of an organization or association not otherwise registered with the secretary of state is a trade name if a license or permit to conduct business or operations is required by this state.
2. A person or organization that has registered a trade name ~~hereunder~~ under this section may institute a civil suit prohibiting any other person from using ~~such~~ the name.
3. ~~The provisions of this~~ This chapter ~~shall~~ does not prohibit any person engaged in business under a trade name ~~prior to~~ before July 1, 1959, from continuing business under ~~such~~ that name.
4. Notwithstanding any other provision of law, an individual or organization may register as a trade name under section 47-25-04 any name listed in paragraph 1, 2, or 3 of subdivision a of subsection 1.

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 403

HOUSE BILL NO. 1140

(Representatives Bellew, Meier)
(At the request of the Secretary of State)

PARTNERSHIP REGISTRATION

AN ACT to amend and reenact subsection 5 of section 45-22-03 of the North Dakota Century Code, relating to limited liability partnership registrations filed with the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 45-22-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A managing partner must be separately registered with the secretary of state at the time of the registration of a domestic or foreign limited liability partnership if that managing partner is a domestic or foreign:
 - a. Corporation;
 - b. Limited liability company;
 - c. Limited partnership;
 - d. Limited liability partnership;
 - e. Limited liability limited partnership; or
 - f. Partnership using a fictitious name.

Approved March 12, 2001
Filed March 12, 2001

PRINTING LAWS

CHAPTER 404

HOUSE BILL NO. 1122

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

STATE PRINTING

AN ACT to amend and reenact sections 46-02-04, 46-02-05, 46-02-06, 46-02-07, and 46-02-09 of the North Dakota Century Code, relating to the acquisition, classifications, specifications, and the authority of the office of management and budget with respect to state printing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-02-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

46-02-04. Classes of printing - Contracts. The printing of the state is divided into the following classes:

1. The printing of bills and resolutions of the legislative assembly constitutes the first class. However, certain bills and resolutions may be excepted from this class, as directed by officers of the legislative assembly or as provided for in the rules of the senate and the house of representatives.
2. The printing and binding of the journals of the senate and the house of representatives constitutes the second class.
3. The printing and binding of the reports and other documents that are prepared and submitted to the governor and secretary of state, and which make up the governmental biennial reports in accordance with sections 54-06-03 and 54-06-04, constitutes the third class. This class does not include the official budget report.
4. The printing and binding of the volumes of laws and legislative resolutions constitutes the fourth class.
5. All printing not included in the foregoing classes constitutes the sixth class.

Separate contracts for classes 3 and 4 must be let by the office of management and budget under competitive bidding in accordance with this title. Contracts for classes 4 and 2 must be let by competitive bidding by the office of management and budget in accordance with the rules of the senate and the house of representatives of the previous legislative session or as directed by the legislative council.

SECTION 2. AMENDMENT. Section 46-02-05 of the North Dakota Century Code is amended and reenacted as follows:

46-02-05. Proposals for printing - Classifications 1, 2, ~~3~~, and 4 - Form, style, quantity, timing specifications. The office of management and budget, at least two months immediately preceding each regular session of the legislative assembly, shall invite sealed bids for doing all printing constituting each of classifications 1, 2, ~~3~~, and 4, required by the legislative assembly ~~and by the several state departments~~ for the two succeeding years commencing with the first day of December next following the date of the contract. ~~Such~~ The invitation for bids for the classes of printing under this section shall include the specifications for form, style, quantity, and timing in accordance with the rules of the senate and house of representatives of the previous legislative session or as directed by the legislative council. All bids must specify the price and cost for which the ~~said~~ printing work will be performed and the stock furnished.

SECTION 3. AMENDMENT. Section 46-02-06 of the North Dakota Century Code is amended and reenacted as follows:

46-02-06. Opening of bids - Awards. The office of management and budget, ~~within fifteen days after the date for receiving proposals as aforesaid,~~ shall award the contract for ~~each class~~ classifications 1, 2, and 4 of printing to the lowest bidder therefor, subject to the provisions of this title. If two or more persons bid the same and the lowest price for any class of printing, the office of management and budget shall award the contract to such one or more of them as in its opinion will best subserve the interests of the state.

SECTION 4. AMENDMENT. Section 46-02-07 of the North Dakota Century Code is amended and reenacted as follows:

46-02-07. Proposals - How made. Each proposal for ~~each class~~ classifications 1, 2, and 4 of state printing let under competitive bids must be in writing, sealed, and addressed to the office of management and budget. The office of management and budget may reject any bid made by anyone other than a regularly established and thoroughly competent printer and also may reject any or all bids if in its judgment the best interests of the state would be subserved thereby.

SECTION 5. AMENDMENT. Section 46-02-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

46-02-09. ~~Sixth-class items - When bids or quotations required~~ Printing classifications 3 and 6 - Procured by the office of management and budget. All ~~work on sixth-class items amounting to seven hundred fifty dollars or over, not done by the central duplicating service of state printing in classifications 3 and 6 must be purchased by the office of management and budget or by departments, institutions, or state offices, must be let by competitive bidding or by the solicitation of at least two quotations by the office of management and budget, or by the departments, institutions, or state offices authorized to bid their own printing needs. Printing items amounting to less than seven hundred fifty dollars may be given by the department head to a printer selected by the department head and accompanied by a purchase order. If practical, all departments, institutions, or state offices authorized to do their own bidding shall take advantage of annual contracts established by the office of management and budget, or delegated, according to~~

chapter 54-44.4, unless the work is done by the central duplicating service of the office of management and budget.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 405

HOUSE BILL NO. 1124

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

LEGAL NOTICE RATES

AN ACT to amend and reenact section 46-05-03 of the North Dakota Century Code, relating to review and adjustment of rates for legal notices by the office of management and budget.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-05-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

46-05-03. Legal notices - Fees. To effect uniformity, the office of management and budget may compute a standard price on those legal notices which are widely published such as ballots, insurance statements, and official proclamations. All newspapers must use the rates, type size, and column width as shown on its legal notice rate certification issued by the office of management and budget. Certifications must be issued within fifteen days after samples are submitted, or as soon thereafter as practicable.

The office of management and budget shall annually biennially review and adjust rates to reflect changes in economic conditions within the newspaper industry and the general economy, and those adjustments become effective on each July first following the review. These annual biennial changes may be percentage increases or decreases in the base rates, and they may incorporate revisions in the base rate structure. Whenever the office of management and budget considers an adjustment in the legal publication rates contained herein, it shall consult with representatives of the daily and weekly newspaper industry of the state and with representatives of state and local units of government.

Approved March 14, 2001
Filed March 15, 2001

PROPERTY

CHAPTER 406

HOUSE BILL NO. 1302

(Representatives Carlisle, Keiser, Kliniske)
(Senators G. Nelson, Stenehjem, Wardner)

PAWNBROKER USURY LAW APPLICATION

AN ACT to amend and reenact section 47-14-09 of the North Dakota Century Code, relating to the application of state usury laws to licensed pawnbrokers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-14-09 of the North Dakota Century Code is amended and reenacted as follows:

47-14-09. Usury - Definition - Maximum contract rate - Prohibition - Exclusions.

1. Except as otherwise provided by the laws of this state, ~~no~~ a person, ~~partnership, limited partnership, trust, association, corporation, limited liability company, or other form of business entity,~~ either directly or indirectly, ~~shall~~ may not take or receive, or agree to take or receive, in money, goods, or things in action, or in any other way, any greater sum or greater value for the loan or forbearance of money, goods, or things in action than five and one-half percent per annum higher than the current cost of money as reflected by the average rate of interest payable on United States treasury bills maturing in six months in effect for North Dakota for the six months immediately ~~prior to~~ preceding the month in which the transaction occurs, as computed and declared on the last day of each month by the state banking commissioner, but that in any event the maximum allowable interest rate ceiling ~~shall~~ may not be less than seven percent, and in the computation of interest the same ~~shall~~ may not be compounded; provided, however, that a minimum interest charge of fifteen dollars may be made. ~~No~~ A contract ~~shall~~ may not provide for the payment of interest on interest overdue, but this section ~~shall~~ does not apply to a contract to pay interest at a lawful rate on interest that is overdue at the time such contract is made. Any violation of this section ~~shall be~~ is deemed usury.
2. This section ~~shall~~ does not apply to a ~~loan~~:
 - a. Bona fide pawnbroking transaction in an amount not exceeding one thousand dollars which is made by a bona fide pawnbroking business transacted under a pawnbroker's license;
 - b. Loan made to a foreign or domestic corporation, foreign or domestic limited liability company, cooperative corporation or association, or trust; ~~or~~;

- c. Loan made to a partnership, limited partnership, or association ~~which that~~ files a state or federal partnership income tax return; ~~not~~ ~~to any loan~~;
 - d. Loan or forbearance of money, goods, or things in action the principal amount of which amounts to more than thirty-five thousand dollars; ~~not to any loan~~; and
 - e. Loan made by a lending institution which is regulated or funded by an agency of a state or of the federal government.
3. ~~Further, without regard to~~ Notwithstanding the interest rate limit set ~~forth~~ ~~herein~~ under this section, state-chartered banks and the Bank of North Dakota may charge interest at a rate equal to the maximum allowable rate which lawfully may be charged for a particular type of loan by national banking associations or state or federally chartered savings and loan associations operating out of facilities located in this state.
4. As used in this section, "bona fide pawnbroking transaction" means a transaction with a licensed pawnbroker which includes both possession and a pledge of tangible personal property.

Approved March 27, 2001
Filed March 27, 2001

CHAPTER 407**HOUSE BILL NO. 1133**

(Representative Klemin)
(Senator Trenbeath)

DOCUMENT PROOF

AN ACT to amend and reenact section 47-19-33 of the North Dakota Century Code, relating to the proof of a document.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-19-33 of the North Dakota Century Code is amended and reenacted as follows:

47-19-33. ~~Who shall not execute acknowledgments and affidavits~~ Prohibition on self-interested individuals from proving documents. ~~No person heretofore or hereafter shall to the same may not take or receive such the proof, acknowledgment, or affidavit or certify to the same; if that person shall be individual is a party to such the instrument, or a member of any partnership or limited liability company which shall or may be that is a party to such the instrument, nor or if the husband or wife of such person or officer shall be that individual is a party to such the instrument. An acknowledgment taken or received in violation of this section is invalid.~~ An individual authorized by law to take or receive the proof or acknowledgment of the execution of an instrument or affidavit and to certify thereto shall to the same may not take or receive such the proof, acknowledgment, or affidavit or certify to the same; if that person shall be individual is a party to such the instrument, or a member of any partnership or limited liability company which shall or may be that is a party to such the instrument, nor or if the husband or wife of such person or officer shall be that individual is a party to such the instrument. An acknowledgment taken or received in violation of this section is invalid.

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 408

HOUSE BILL NO. 1178

(Representatives Grosz, F. Klein)
(At the request of the Secretary of State)

TRADEMARK AND TRADE NAME CHANGE AND CANCELLATION

AN ACT to amend and reenact subsections 2 and 3 of section 47-22-06.1, subsection 5 of section 47-22-08, subsections 2 and 3 of section 47-25-06.1, and subsection 4 of section 47-25-07 of the North Dakota Century Code, relating to name changes of registrants and cancellations of trademarks and trade names filed with the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 3 of section 47-22-06.1 of the North Dakota Century Code are amended and reenacted as follows:

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 ~~or~~, 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 ~~or~~, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership registered with the secretary of state.

SECTION 2. AMENDMENT. Subsection 5 of section 47-22-08 of the North Dakota Century Code is amended and reenacted as follows:

5. Any trademark whose registered owner is a corporation ~~or~~, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership that has ceased to exist for six months.

SECTION 3. AMENDMENT. Subsections 2 and 3 of section 47-25-06.1 of the North Dakota Century Code are amended and reenacted as follows:

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 ~~or~~, 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; or
3. An amendment or application for amended certificate of authority for a registrant that is a corporation ~~or~~, limited liability company, limited

partnership, limited liability partnership, or limited liability limited partnership registered with the secretary of state.

SECTION 4. AMENDMENT. Subsection 4 of section 47-25-07 of the North Dakota Century Code is amended and reenacted as follows:

4. Any trade name when the registrant is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership that has ceased to exist for six months.

Approved March 13, 2001
Filed March 13, 2001

CHAPTER 409

HOUSE BILL NO. 1066

(Judiciary Committee)

(At the request of the Board of University and School Lands)

ABANDONED STOCK DIVIDEND CREDIT

AN ACT to create and enact section 47-30.1-21.1 of the North Dakota Century Code, relating to credits abandoned stock; and to amend and reenact subsection 1 of section 47-30.1-22 and subsection 2 of section 47-30.1-35 of the North Dakota Century Code, relating to abandoned property under the Uniform Unclaimed Property Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 47-30.1-21.1 of the North Dakota Century Code is created and enacted 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.

SECTION 2. AMENDMENT. Subsection 1 of section 47-30.1-22 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsection 2, the administrator, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever ~~city in the state~~ manner affords in the judgment of the administrator the most favorable market for the property involved. The administrator may decline the highest bid and reoffer the property at a public sale if in the judgment of the administrator the bid is insufficient. If in the judgment of the administrator the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any public sale held under this section must be preceded by a single publication of notice, at least ~~three~~ two weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

SECTION 3. AMENDMENT. Subsection 2 of section 47-30.1-35 of the North Dakota Century Code is amended and reenacted as follows:

2. An agreement entered into after such twenty-four-month period is enforceable only if the agreement is in writing and the aggregate fee, compensation, or commission paid directly or indirectly charged is not in excess of ~~twenty-five~~ ten percent of the amount recovered.

Approved April 19, 2001
Filed April 19, 2001

PUBLIC BUILDINGS

CHAPTER 410

HOUSE BILL NO. 1166

(Transportation Committee)

(At the request of the Department of Transportation)

DOT BUILDING PLANS

AN ACT to amend and reenact section 48-01.1-04 of the North Dakota Century Code, relating to the department of transportation procuring plans and specifications for buildings to be used for the storage and housing of road materials, machinery, equipment, and tools; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.1-04 of the North Dakota Century Code is amended and reenacted as follows:

48-01.1-04. Plans and specifications for public improvement contracts.

If a contract of a governing body for the construction of a public improvement is estimated to cost in excess of one hundred thousand dollars, the governing body shall procure plans, drawings, and specifications for the work from a licensed architect or registered professional engineer. For public buildings in use by or to be used by the North Dakota agricultural experiment stations in connection with farm or agricultural research operations, the plans, drawings, and specifications, with the approval of the state board of higher education, may be procured from a registered professional engineer if the engineer is in the regular employment of the agricultural experiment station. For public buildings in use by or to be used by the department of transportation for the storage and housing of road materials and road machinery, equipment, and tools, the plans, drawings, and specifications may be procured from a registered professional engineer employed by the department of transportation.

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

Approved March 27, 2001

Filed March 27, 2001

CHAPTER 411

HOUSE BILL NO. 1386

(Representatives Wald, Carlson, Svedjan)
(Senator Tollefson)

CONSTRUCTION MANAGEMENT

AN ACT to amend and reenact sections 48-01.1-09, 54-44.7-01, and 54-44.7-02, subsection 1 of section 54-44.7-03, and subsection 1 of section 54-44.7-04 of the North Dakota Century Code, relating to construction management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-01.1-09 of the North Dakota Century Code is amended and reenacted as follows:

48-01.1-09. Use of construction manager. If a governing body uses a construction manager on a public improvement, the construction manager must be a licensed contractor. A The construction manager awarded a the contract for construction of a public improvement shall bond the entire cost of the project through a single bond, or through bonds supporting provided by all bid packages and the construction manager's bond for the full amount of the construction manager's services. If the total of the bonds is less than the total project bid, the construction manager shall bond the difference between the total of the bonds and the total project bid.

SECTION 2. AMENDMENT. Section 54-44.7-01 of the North Dakota Century Code is amended and reenacted as follows:

54-44.7-01. Definition. "Architect, engineer, construction management, and land surveying services" are those professional services associated with the practice of architecture, professional engineering, professional land surveying, landscape architecture, ~~and~~ interior design pertaining to construction, and construction management, as defined by the laws of this state, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, inspections, construction management, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals, and other related services, except for professional services related to prefabricated steel for bridge purposes.

SECTION 3. AMENDMENT. Section 54-44.7-02 of the North Dakota Century Code is amended and reenacted as follows:

54-44.7-02. Applicability - Policy. Architect, engineer, construction management, and land surveying services must be procured as provided in this chapter. It is the policy of this state that all North Dakota state agencies shall negotiate contracts for services on the basis of demonstrated competence and qualification for the particular type of services required.

SECTION 4. AMENDMENT. Subsection 1 of section 54-44.7-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Each using agency shall establish its own architect, engineer, construction management, and land surveying services selection committee hereinafter referred to as the agency selection committee, which must be composed of those individuals whom the agency head determines to be qualified to make an informed decision as to the most competent and qualified firm for the proposed project. The head of the using agency or his qualified, responsible designee shall sit as a member of the agency selection committee for the purpose of coordinating and accounting for the committee's work.

SECTION 5. AMENDMENT. Subsection 1 of section 54-44.7-04 of the North Dakota Century Code is amended and reenacted as follows:

1. All state agencies securing architect, engineer, construction management, or land surveying services for projects for which the fees are estimated not to exceed ten thousand dollars may employ the architects, engineers, construction managers, and land surveyors by direct negotiation and selection, taking into account all of the following:
 - a. The nature of the project.
 - b. The proximity of the architect, engineer, construction management, or land surveying services to the project.
 - c. The capability of the architect, engineer, construction manager, or land surveyor to produce the required services within a reasonable time.
 - d. Past performance.
 - e. Ability to meet project budget requirements.

This procedure shall still follow state policy set forth above.

Approved May 10, 2001
Filed May 10, 2001

CHAPTER 412**SENATE BILL NO. 2375**

(Senators Espegard, Grindberg)
(Representatives Kretschmar, Maragos)

DIRECTED SURETYSHIP BONDS PROHIBITED

AN ACT to create and enact a new section to title 48 of the North Dakota Century Code, relating to limitations on governing bodies requiring directed suretyship bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to title 48 of the North Dakota Century Code is created and enacted as follows:

Public buildings - Directed surety bonds prohibited. A governing body may not require any person required to provide a surety bond under this title to furnish financial data to or obtain a surety bond from a specified insurance or surety company or insurance producer.

Approved March 28, 2001

Filed March 28, 2001

PUBLIC UTILITIES

CHAPTER 413

SENATE BILL NO. 2359

(Senators Robinson, Cook, Lyson)
(Representatives Jensen, R. Kelsch, Mahoney)

RAILWAY CRITICAL INCIDENT STRESS DEBRIEFING POLICY

AN ACT to provide for a critical incident stress debriefing policy; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

Approved April 12, 2001
Filed April 12, 2001

CHAPTER 414

HOUSE BILL NO. 1182

(Education Committee)

(At the request of the State Board of Higher Education)

TELECOMMUNICATIONS SERVICE DEFINITION

AN ACT to amend and reenact section 49-21-01.1 of the North Dakota Century Code, relating to the definition of telecommunications service for purposes of telecommunications regulation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01.1 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.1. Inapplicability of provisions of chapter. Telecommunications service does not include and the provisions of this title do not apply to:

1. The one-way transmission of radio or television signals for broadcast purposes, including the one-way transmission of video programming or other programming service by a cable system as well as subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
2. A hospital, hotel, motel, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the purpose of reselling telecommunications services to its patients or guests.
3. Telegraph service.
4. Except as provided in section 49-21-01.5, home, business, and coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment.
5. The lease of telecommunications equipment by a telecommunications company from a person whose business is the leasing or sale of such equipment.
6. Billing and collection services.
7. Inside wire and premise cable installation and maintenance.
8. Directory services which are not essential, such as "yellow pages" advertising and boldface or color listings in "white pages".
9. Private line transport service.
10. Services or facilities provided by a system or institution of higher education to:

- a. Institution employees or students at institution facilities or housing owned or leased by the institution;
- b. Affiliated organizations, including alumni operations and research foundations, formed for the purpose of supporting the institution or leased by the institution and offering products and services intended primarily for the benefit of institution employees, students, or guests;
- c. Other persons or entities located on property owned or leased by the institution and offering products and services intended primarily for the benefit of institution employees, students, or guests;
- d. Casual users using the institution's facilities for conferences, seminars and other similar special events, and broadcasters of athletic events;
- e. Occupants of technology parks, or business incubators receiving secretarial or business start-up support in facilities owned or leased by the institution during a business start-up phase for a term not to exceed four years or until August 1, 2005, whichever is later; and
- f. Educational, governmental and nonprofit users of system or institution interactive video conferencing site facilities and associated network services.

Institutions may not unreasonably restrict access by a telecommunications company to institution facilities for the purpose of furnishing telecommunications services to residents in institution housing or to other persons or entities leasing institution facilities, except institutions may limit access to residence halls. Institutions may require reasonable payment for and adopt reasonable restrictions on the use of institution telecommunications infrastructure to avoid service interruptions or increased maintenance or administrative burdens.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 415

HOUSE BILL NO. 1090

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

TELECOMMUNICATIONS COMPANY FEES

AN ACT to amend and reenact section 49-21-01.2 of the North Dakota Century Code, relating to filing fees and exemption from rate of return regulation for the provision of telecommunications service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01.2 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.2. Exemption - Rate regulation. Except as provided for in this chapter and sections 49-02-01.1, 49-02-21, 49-02-22, and 49-04-02.1, telecommunications companies and all telecommunications services are exempt from the provisions of chapters 49-02, 49-04, 49-05, and 49-06. Telecommunications companies and services are not subject to rate or rate of return regulation. Any telecommunications company may elect not to be subject to the provisions of this section and section 49-21-01.3, and to be subject to rate and rate of return regulation, by filing an election with the commission in writing. For telecommunications companies with over fifty thousand subscribers, the election not to be exempt from rate and rate of return regulation is a one-time, irrevocable election. Notwithstanding an election filed under this section, a telecommunications company is not obligated to pay any fee for filing a price schedule or tariff.

Approved March 12, 2001
Filed March 12, 2001

CHAPTER 416

HOUSE BILL NO. 1093

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

TELECOMMUNICATIONS UNAUTHORIZED CHARGES

AN ACT to amend and reenact subsections 1 and 3 of section 49-21-02.4 of the North Dakota Century Code, relating to unauthorized charges in telecommunications service and providers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 49-21-02.4 of the North Dakota Century Code are amended and reenacted as follows:

1. A telecommunications company shall comply with the provision of title 47, Code of Federal Regulations, part 64, subpart k, in effect on January 1, 2001, regarding changes in a subscriber's selection of a provider of telecommunications service. The commission shall enforce the provisions of title 47, Code of Federal Regulations, part 64, subpart k, in effect on January 1, 2001.
3. If the commission finds an emergency exists that requires ex parte action, the commission may issue a cease and desist order without prior notice against a telecommunications company that the commission has reason to believe is in violation of this section or title 47, Code of Federal Regulations, part 64, subpart k, in effect on January 1, 2001. The cease and desist order must be:
 - a. Directed against the telecommunications company's marketing of telecommunications service, not the company's provision of service to current customers;
 - b. Accompanied by service on the telecommunications company of a commission order opening an investigation or a formal complaint regarding the company's compliance with this section; and
 - c. Accompanied by service on the telecommunications company of a notice of opportunity to be heard on the cease and desist order within fifteen days of issuance of the cease and desist order.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 417

SENATE BILL NO. 2227 (Senators Heitkamp, Traynor) (Representative Carlson)

UNDERGROUND FACILITY DAMAGE

AN ACT to amend and reenact section 49-23-06 of the North Dakota Century Code, relating to damages to underground facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-23-06 of the North Dakota Century Code is amended and reenacted as follows:

49-23-06. Damage to facilities - Penalty.

1. a. If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall dispatch, as soon as reasonably possible, personnel to the damage area to investigate. If the damage endangers life, health, or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.
- b. An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.
- c. An excavator who knowingly damages an underground facility and who does not notify the operator as soon as reasonably possible or who backfills in violation of subdivision b is guilty of a class A misdemeanor.
2. a. If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.
- b. Reimbursement to the operator under this subsection is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with sections 49-23-03 and 49-23-04.

3. It is prima facie evidence of the excavator's negligence in a claim for relief if damage to the underground facilities of an operator resulted from excavation and the excavator failed to give an excavation notice under section 49-23-04 or provide support as required by section 49-23-05.

Approved March 22, 2001

Filed March 22, 2001

PUBLIC WELFARE

CHAPTER 418

HOUSE BILL NO. 1108

(Human Services Committee)

(At the request of the Department of Human Services)

TEMPORARY ASSISTANCE TO NEEDY FAMILIES AND DOMESTIC VIOLENCE VICTIMS

AN ACT to create and enact a new section to chapter 50-09 of the North Dakota Century Code, relating to victims of domestic violence; to amend and reenact subsection 2 of section 50-01.2-00.1, sections 50-09-06, 50-09-06.1, and subsection 1 of section 50-09-29 of the North Dakota Century Code, relating to the temporary assistance for needy families program; and to repeal sections 50-06-01.8 and 50-09-26 of the North Dakota Century Code, relating to transition to the temporary assistance for needy families program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 50-01.2-00.1 of the North Dakota Century Code is amended and reenacted as follows:

2. "Local expenses of administration" includes costs for personnel, space, equipment, computer software, materials, travel, utilities, and related costs, and the indirect costs properly allocated to those costs. The term does not include initial acquisition of computers and related hardware approved by the department for the ~~training, education, employment, and management~~ temporary assistance for needy families program, custom computer programs, custom software development, computer operations undertaken at the direction of the department, and computer processing costs to the extent those costs exceed, in any calendar year, that county's costs of operation of the technical eligibility computer system in calendar year 1995 increased by the increase in the consumer price index for all urban consumers (all items, United States city average) after January 1, 1996, or, unless agreed to by the county social service board, any costs related to pilot programs before the programs are implemented on a statewide basis.

SECTION 2. AMENDMENT. Section 50-09-06 of the North Dakota Century Code is amended and reenacted as follows:

50-09-06. Application for assistance - Assignment of support rights. Application for assistance under this chapter must be made to the county agency in the manner and form prescribed by the state agency. The application must contain such information as the state agency may require, and the action of the state agency in approving and granting assistance or in disapproving and denying assistance is final and binding on the county agency. ~~An application for assistance under this chapter is deemed to create and effect an assignment of all rights of support, which~~

exist or may come to exist for the benefit of the child, to the state agency and county agency. The assignment:

1. Is effective as to both current and accrued child support obligations.
2. Takes effect upon a determination of eligibility for assistance under this chapter.
3. Terminates when an applicant ceases to receive assistance under this chapter, except with respect to the amount of any unpaid support obligation accrued under the assignment.

¹⁹¹ **SECTION 3. AMENDMENT.** Section 50-09-06.1 of the North Dakota Century Code is amended and reenacted as follows:

50-09-06.1. Application for foster care for children - Assignment of support rights. Application for foster care for children must be made to the county agency in the manner and form prescribed by the state agency. The application must contain such information as the state agency may require. An application for foster care for children under this chapter is deemed to create and effect an assignment of all rights to support, which the a family member or foster child may have or come to have, to the state agency and county agency. The assignment:

1. Is effective as to both all current and accrued child support obligations and periods of eligibility;
2. Takes effect upon a determination that the child is eligible for foster care for children. Is limited to the total cost of benefits provided to the family or foster child; and
3. Terminates when the child eligibility ceases to receive foster care for children, except with respect to the amount of any unpaid support obligation accrued under the assignment unpaid at that time.

SECTION 4. AMENDMENT. Subsection 1 of section 50-09-29 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in subsections 2, 3, and 5 through 7, the department of human services, in its administration of temporary assistance for needy families in the form of the training, education, employment, and management 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;
 - c. Exempt up to twenty percent of the caseload from the requirements of subdivision b due to mental or physical disability of a parent or

¹⁹¹ Section 50-09-06.1 was also amended by section 27 of House Bill No. 1012, chapter 12.

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 as provided in subdivision ~~m~~ k, 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. ~~Seek approval of appropriate federal officials, and, if approved, use a simplified food stamp program to provide food stamp benefits to eligible households receiving temporary assistance for needy families;~~
- ~~h.~~ Exclude one motor vehicle of any value in determining eligibility;
- ~~i.~~ 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;
- ~~j.~~ 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;
- ~~k.~~ 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;
- ~~l.~~ ~~Afford otherwise eligible households that have resided in this state less than twelve months benefits subject to the lifetime limit of the household's immediately previous state of residence;~~
- ~~m.~~ k. 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;
- ~~n.~~ l. Establish and enforce standards against program fraud and abuse;

- ~~o~~ m. Establish procedures to screen and identify victims of domestic violence for referral to appropriate services which are to be incorporated into the training, education, employment, and management temporary assistance for needy families program assessment effective June 30, 1998;
- ~~p~~ n. Provide an employment placement program;
- ~~q~~ o. Implement, as soon as practicable, an electronic fund transfer system;
- ~~r~~ p. Consider exempting funds in individual development accounts;
- ~~s~~ q. Determine the unemployment rate of adults living ~~on an~~ in a county that includes Indian reservation lands and a significant population of Indian individuals by using ~~the~~ unemployment data provided by job service North Dakota;
- ~~t~~ r. When appropriate, require household members to complete high school;
- ~~u~~ s. Exempt single parents from required work activities as defined in section 14-08.1-05.1 if the exempted parent has a child under four months of age;
- ~~v~~ t. ~~Count only approved work activities as defined in section 14-08.1-05.1 for the purpose of measuring work participation rates;~~
- ~~w~~ t. Provide for ~~progressive~~ sanctions, including termination of assistance to the household, if a household member fails to cooperate with work requirements;
- ~~x~~ u. Provide for ~~progressive~~ sanctions, including termination of assistance to the household, if a household member fails, without good cause, to cooperate with child support activities;
- ~~y~~ v. 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;
- ~~z~~ w. Require each household to participate in developing an individual responsibility plan and provide for ~~progressive~~ 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;
- ~~aa~~ x. Provide pre-pregnancy family planning services that are to be incorporated into the training, education, employment, and management temporary assistance for needy families program assessment effective June 30, 1998;
- ~~bb~~ y. Seek federal funding to assist in the evaluation of the program;

- ~~cc.~~ ~~Seek the approval of the secretary to develop and use a single application form for all economic assistance programs administered by the county social service boards;~~
- ~~dd.~~ z. After June 30, 1998, ~~except~~ 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 month of the child's probable conception;
- ~~ee.~~ aa. Disregard earned income as an incentive allowance for no more than twelve months; ~~and~~
- ~~ff.~~ bb. 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
- cc. 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.

SECTION 5. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Victims of domestic violence - Duties of state agency.

1. The state agency shall:
 - a. Inform all temporary assistance for needy families applicants and recipients of the options available under the domestic violence option;
 - b. Screen all applicants to determine who are past or present victims of domestic violence or at risk of further domestic violence;
 - c. Refer these individuals to a local domestic violence sexual assault organization for safety planning and supportive services; and
 - d. Determine if good cause exists to waive work requirements or time limits on receipt of benefits for victims of domestic violence.
2. For purposes of this section:

- a. "Domestic violence option" means the provision of title IV-A under which a state may elect to implement a special program to serve victims of domestic violence.
- b. "Domestic violence sexual assault organization" has the meaning provided in section 14-07.1-01.
- c. "Victims of domestic violence" means a person subject to domestic violence as defined in section 14-07.1-01.

¹⁹² **SECTION 6. REPEAL.** Sections 50-06-01.8 and 50-09-26 of the North Dakota Century Code are repealed.

Approved March 27, 2001
Filed March 27, 2001

¹⁹² Section 50-06-01.8 was amended by section 21 of Senate Bill No. 2032, chapter 488.

CHAPTER 419

HOUSE BILL NO. 1385

(Representative Delzer)

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 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. ~~If a child is placed in an out-of-home treatment program established under this section, the juvenile court must make a judicial determination as to whether the placement is in the best interests of the child.~~ 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.

Approved April 24, 2001

Filed April 24, 2001

CHAPTER 420**SENATE BILL NO. 2168**

(Human Services Committee)

(At the request of the Department of Human Services)

HUMAN SERVICES PREMIUM TAX EXEMPTION

AN ACT to amend and reenact section 50-06-19 of the North Dakota Century Code, relating to exemption from insurance premium taxes paid by the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-19 of the North Dakota Century Code is amended and reenacted as follows:

50-06-19. Exemption from insurance premium tax. No tax otherwise due under section 26.1-03-17 may be required of a stock or mutual insurance company, nonprofit health service corporation, or health maintenance organization with respect to ~~premiums, capitation payments, policy fees, or service fees~~ collected by any third-party administrator providing administrative services or premiums, capitation payments, or policy fees paid by the department for coverage or services provided to a recipient of benefits.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 421

SENATE BILL NO. 2308

(Senators Kringstad, Kilzer, Thane)
(Representatives Cleary, Grande, Maragos)

COMPULSIVE GAMBLING PREVENTION AND TREATMENT

AN ACT to amend and reenact the new section to chapter 50-06 of the North Dakota Century Code as created by section 2 of House Bill No. 1089, as approved by the fifty-seventh legislative assembly, relating to compulsive gambling prevention, awareness, crisis intervention, rehabilitation, and treatment services; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹³ **SECTION 1. AMENDMENT.** The new section to chapter 50-06 of the North Dakota Century Code as created by section 2 of House Bill No. 1089, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

Compulsive gambling prevention, awareness, crisis intervention, rehabilitation, and treatment services. The department of human services shall contract with qualified treatment service providers for the development and implementation of a program for gambling prevention, awareness, crisis intervention, rehabilitation, financial counseling, and mental health treatment services. The program may provide outpatient services, partial care services, aftercare services, intervention services, financial counseling services, consultation services, or other forms of preventive, rehabilitative, or treatment services for compulsive gamblers. An individual who provides treatment services must ~~meet the minimum standards for certification as a gambling counselor as established by the national council on problem gambling and~~ be a mental health professional as defined in section 25-03.1-02 and meet the minimum standards for certification as a gambling counselor as established by rule by that mental health professional's licensing board. An individual who provides financial counseling services must be a certified consumer credit counselor with an accredited financial counseling agency. The department of human services may establish a sliding payment scale for services under the program. The department of human services may establish a centrally located repository of educational materials on identifying and treating compulsive gambling. Any service fee collected by qualified treatment service providers for services provided under the contract must be applied toward the program's compulsive gambling services. The term "qualified treatment service provider" means an entity based in North Dakota which is experienced in and capable of delivering compulsive gambling education, prevention, awareness, crisis intervention, rehabilitation, financial counseling, and mental health treatment services as defined by the department of human services. The term "compulsive gambler" means an individual who is chronically and progressively preoccupied with gambling and the urge to gamble and with gambling behavior that compromises, disrupts, or damages personal, family, or vocational pursuits.

¹⁹³ Section 50-06-21 was created by section 2 of House Bill No. 1089, chapter 460.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$89,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing for a compulsive gambling prevention, awareness, rehabilitation, and treatment program, of which \$1,000 may be designated for per diem and travel expenses for in-state professional boards to gather information and set certification standards, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 422

HOUSE BILL NO. 1110

(Human Services Committee)

(At the request of the Department of Human Services)

UNCOLLECTED CLAIMS INTEREST

AN ACT to create and enact a new section to chapter 50-06.3 of the North Dakota Century Code, relating to interest accrued on uncollected aged, blind, and disabled claims.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-06.3 of the North Dakota Century Code is created and enacted as follows:

Interest not to accrue on uncollected claims. Rights existing and vested or instruments executed under sections 50-24-13, 50-24-15, 50-24-30, 50-24-33, 50-24-34, and 50-24-38 prior to July 1, 1979, continue to be effective until their expiration according to their own terms or by force of law. Interest not already collected may not accrue on the principal amount of those claims.

Approved March 12, 2001

Filed March 12, 2001

CHAPTER 423

SENATE BILL NO. 2096

(Human Services Committee)

(At the request of the Department of Human Services)

FOSTER CARE PROVIDER FINGERPRINTING AND CRIMINAL RECORDS CHECK

AN ACT to create and enact a new subsection to section 50-11-06.8 of the North Dakota Century Code, relating to when fingerprints and a criminal history record investigation are required of an adult family foster care provider; and to amend and reenact subsection 2 of section 50-11-02, section 50-11-02.4, subsection 5 of section 50-11-06.8, and section 50-11-06.9 of the North Dakota Century Code, relating to when fingerprints are not required of a foster care provider, when a law enforcement agency is to take fingerprints of persons providing foster care services, and when a criminal history record investigation is not required of foster care providers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 50-11-02 of the North Dakota Century Code is amended and reenacted as follows:

2. Before licensing or approving a facility providing foster care for children or adults, the department shall seek a criminal history record when required by ~~section 50-11-06.8~~ this chapter. The department shall consider any criminal history record information available at the time a licensing or approval decision is made.

SECTION 2. AMENDMENT. Section 50-11-02.4 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02.4. Criminal history record investigation - Fingerprinting not required.

1. a. Except as provided in section 50-11-06.9, each facility providing foster care for children shall secure from any individual employed by the facility and any adult living in the facility, but not being provided care in the facility, identifying information other than fingerprints, that is appropriate to accomplish a statewide criminal history record investigation.
- b. Except as provided in section 50-11-06.9, the department shall secure from any individual employed by, or providing care in, an adult family foster care facility and any adult living in the facility, but not being provided care in the facility, identifying information other than fingerprints, that is appropriate to accomplish a statewide criminal history record investigation.
2. Fingerprints need not be taken and a nationwide background check need not be made if an individual:

- (1) a. Has resided continuously in this state for eleven years or since reaching age eighteen, whichever is less;
 - (2) b. Is on active United States military duty or has resided continuously in this state since receiving an honorable discharge; or
 - (3) c. Is excused from providing fingerprints under rules adopted by the department.
2. 3. The department shall verify that sufficient identifying information has been provided. Upon verification, the department shall submit that information to the bureau of criminal investigation.
 3. 4. The bureau of criminal investigation shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department. The department shall provide a copy of any response received from the bureau of criminal investigation to the facility.
 4. 5. The department shall pay the cost of securing any criminal history record information made available under chapter 12-60.
 5. 6. The department shall consult with the bureau of criminal investigation to determine the identifying information, other than fingerprints, appropriate to accomplish a statewide criminal history record investigation.
 6. 7. The department may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.

SECTION 3. A new subsection to section 50-11-06.8 of the North Dakota Century Code is created and enacted as follows:

Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall secure from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:

- a. Any individual employed by, or providing care in, an adult family foster care facility; and
- b. Any adult living in an adult family foster care facility, but not being provided care in the facility.

SECTION 4. AMENDMENT. Subsection 5 of section 50-11-06.8 of the North Dakota Century Code is amended and reenacted as follows:

5. Upon request by the operators of a facility, a law enforcement agency shall take fingerprints of persons described in ~~subdivisions a and b of subsection 4~~ this section if the request is made for purposes of this section.

SECTION 5. AMENDMENT. Section 50-11-06.9 of the North Dakota Century Code is amended and reenacted as follows:

50-11-06.9. Criminal history record investigation - When not required. A criminal history record investigation may not be required, under section 50-11-06.8 or section 50-11-02.4, of a family foster care home for children or of a family foster care home for adults licensed or approved on August 1, 1999, for so long as that home remains continuously licensed or approved.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 424**SENATE BILL NO. 2092**

(Human Services Committee)

(At the request of the Department of Human Services)

FOSTER CARE LAW VIOLATION INJUNCTION

AN ACT to create and enact section 50-11-09.1 of the North Dakota Century Code, relating to district court injunctions to stop or prevent a violation of foster care home laws or rules.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 50-11-09.1 of the North Dakota Century Code is created and enacted as follows:

50-11-09.1. District court injunctions. The department may petition the district court for an injunction to stop or prevent a violation of this chapter or of administrative rules adopted under this chapter.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 425

HOUSE BILL NO. 1441

(Representatives Niemeier, Boucher, Cleary, Kerzman)
(Senator Bercier)

MEDICAL ASSISTANCE AND CHILDREN'S HEALTH INSURANCE

AN ACT to create and enact a new subsection to section 50-24.1-02.6 and a new section to chapter 50-29 of the North Dakota Century Code, relating to medical assistance benefits and the children's health insurance program; to provide for a legislative council study; to provide for a continuing appropriation; to require maximizations of federal reimbursement; to provide for an effective date; and to provide for an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 50-24.1-02.6 of the North Dakota Century Code is created and enacted as follows:

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. A new section to chapter 50-29 of the North Dakota Century Code is created and enacted as follows:

Grants - Gifts - Donations - Continuing appropriation. The department may accept any gift, grant, or donation, whether conditional or unconditional, for the purpose of providing funds for the children's health insurance program. The department may contract with public or private entities and may expend any moneys available to the department to obtain matching funds for the purposes of this chapter. The department shall seek grants from the academy for health research and health policy state coverage initiative and from any other entity that may award such grants. All moneys received as a gift, grant, or donation under this section are appropriated as a standing and continuing appropriation to the department for the purpose of providing funds for the children's health insurance program.

SECTION 3. LEGISLATIVE COUNCIL STUDY. During the 2001-02 interim, the legislative council shall consider studying the coordination of the medical assistance and the children's health insurance programs, including the development of a single application form for both programs, whether the children's health insurance program should be administered by the state or the counties, the effects of eliminating the asset eligibility requirement for the medical assistance program, the standardization of the definition of "income" for all programs administered by the department of human services, and the feasibility and desirability of seeking a federal waiver to allow the children's health insurance program plan to provide coverage for a family through an employer-based insurance policy if an employer-based insurance policy is more cost-effective than the traditional plan coverage for the children. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 4. FEDERAL REIMBURSEMENT. The department of human services shall seek an amendment to its state plan to maximize federal reimbursement through the program to provide health assistance to low-income children funded through title XXI of the federal Social Security Act, for the removal of the asset test for the medical assistance program.

SECTION 5. EFFECTIVE DATE - EXPIRATION DATE. Section 1 of this Act becomes effective upon certification by the department of human services to the governor and the legislative council that the state plan amendments to the children's health insurance program have received federal approval. In no case, however, may section 1 of this Act become effective before January 1, 2002. If section 1 of this Act becomes effective, the section is effective through June 30, 2003, and after that date is ineffective.

Approved April 26, 2001

Filed April 26, 2001

CHAPTER 426

HOUSE BILL NO. 1472

(Representatives Sandvig, Cleary, Niemeier)
(Senators Heitkamp, D. Mathern, T. Mathern)

BREAST AND CERVICAL CANCER MEDICAL ASSISTANCE

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to medical assistance for breast and cervical cancer; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Medical assistance 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. APPROPRIATION - COMMUNITY HEALTH TRUST FUND TRANSFER. There is appropriated out of any moneys in the community health trust fund in the state treasury, not otherwise appropriated, the sum of \$114,755, or so much of the sum as may be necessary, and from special funds derived from federal funds, the sum of \$429,365, or so much of the sum as may be necessary, to the department of human services for the purpose of providing medical assistance coverage for breast and cervical cancer for the biennium beginning July 1, 2001, and ending June 30, 2003. The funds appropriated from the community health trust fund must be transferred to the department of human services operating fund as requested by the director of the department of human services.

SECTION 3. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2003, and after that date is ineffective.

Approved April 13, 2001
Filed April 16, 2001

CHAPTER 427**HOUSE BILL NO. 1115**

(Human Services Committee)

(At the request of the Department of Human Services)

BASIC CARE PERSONAL CARE OPTION

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to a personal care option for individuals residing in basic care facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Personal care option. The department of human services may implement a personal care option benefit program. Personal care option benefits may only be made available to qualifying individuals who reside in basic care facilities. As used in this section, "basic care facility" has the meaning provided in section 23-09.3-01.

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

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 428**SENATE BILL NO. 2403**

(Senators Kilzer, Christmann, T. Mathern)

**ORAL MAXILLOFACIAL AND ORTHODONTIC CARE
MEDICAID ELIGIBLE**

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the provision of medically necessary oral maxillofacial services and associated orthodontic care through the medicaid program; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Oral maxillofacial services - Medical necessity. The department of human services shall make oral maxillofacial surgical services and orthodontic services in conjunction with, or in lieu of, such surgical services available through the medicaid program to anyone who is a medicaid recipient if such services are reasonably likely to correct or mitigate a congenital or acquired deformity associated with a significant functional impairment in drinking, eating, swallowing, or speaking.

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

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 429

HOUSE BILL NO. 1117

(Human Services Committee)

(At the request of the Department of Human Services)

TARGETED CASE MANAGEMENT

AN ACT to amend and reenact sections 50-24.3-01 and 50-24.3-03 of the North Dakota Century Code, relating to the provision of targeted case management by the department of human services; to provide an expiration date; 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. ~~Assessment mechanism - Establishment~~ Targeted case management. 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 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.

SECTION 2. AMENDMENT. Section 50-24.3-03 of the North Dakota Century Code is amended and reenacted as follows:

50-24.3-03. 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 targeted case management services approved by the department:

1. To seek cooperation from other public and private agencies entities in the community which offer services to disabled and elderly persons individuals with disabilities or the elderly.
2. To provide information and education to the general public regarding availability of the assessment program targeted case management.
3. To accept referrals from an interested party including individuals, families, human services program professionals, and nursing home 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 ~~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~~ an individual care plan for each individual receiving targeted case management services.
7. To inform referred individuals of the extent to which ~~home~~ long-term care services are available, including institutional and community-based services are available, and of ~~their~~ the individual's opportunity to choose, in consultation with an attending physician ~~and, family member 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.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 2003, and after that date is ineffective.

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

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 430

SENATE BILL NO. 2097

(Human Services Committee)

(At the request of the Department of Human Services)

NURSING HOME REPORTING REQUIREMENTS

AN ACT to amend and reenact of section 50-24.4-08 and subsection 1 of section 50-24.4-23 of the North Dakota Century Code, relating to reporting requirements for nursing homes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 50-24.4-23 of the North Dakota Century Code is amended and reenacted as follows:

1. No later than October first of each year, each nursing home ~~which~~ that receives medical assistance payments from the department shall:
 - a. ~~Provide~~ Except for state-owned facilities, provide the department with a copy of its audited report that meets the reporting standards of the American institute of certified public accountants and includes an audited statement of the rate or rates charged to private-paying residents. The examination by the certified public accountant must be conducted in accordance with generally accepted auditing standards as promulgated and adopted by the American institute of certified public accountants;
 - b. Provide the department with a statement of ownership for the facility or a certification that ownership has not changed since the most recent statement given pursuant to this subsection;
 - c. Provide the department with ~~separate,~~ audited financial statements as specified in subdivision a of this subsection for every other facility owned in whole or in part by an individual or entity which has an ownership interest in the facility;
 - d. Upon request, provide the department with ~~separate,~~ audited financial statements as specified in subdivision a of this subsection for every organization with which the facility conducts business and which is owned in whole or in part by an individual or entity which has an ownership interest in the facility;
 - e. Provide the department with copies of leases, purchase agreements, appraisals, financing arrangements, and other documents related to the lease or purchase of the nursing facility, or a certification that the content of any such document remains unchanged since the most recent statement given pursuant to this subsection;
 - f. Upon request, provide the department with copies of leases, purchase agreements, and other documents related to the

acquisition of equipment, goods, and services which are claimed as allowable costs; and

- g. Permit access by the department to the certified public accountant's audit workpapers which support the audited financial statements required in subdivisions a, c, and d of this subsection.

SECTION 2. AMENDMENT. Section 50-24.4-08 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-08. Notice of increases to private-paying residents. No increase in nursing home rates for private-paying residents is effective unless the nursing home notifies the resident or person responsible for payment of the increase in writing thirty days before the increase takes effect. A nursing home may adjust its rates without giving the notice required by this section when the purpose of the rate adjustment is to reflect a necessary change in the category of care provided to a resident. If the department fails to set rates at least forty days prior to the beginning of a rate year, the time required for giving notice is decreased by the number of days by which the department was late in setting the rates, except when a facility fails to file a cost report by October first.

Approved April 17, 2001
Filed April 17, 2001

CHAPTER 431

HOUSE BILL NO. 1196

(Representatives Devlin, Boucher, Severson)
(Senators Andrist, Fischer, Solberg)

NURSING FACILITY ALTERNATIVE LOAN FUND AND BED MORATORIUM

AN ACT to provide for a long-term care nursing scholarship and loan repayment grant program; to create and enact a new subsection to section 21-10-06 of the North Dakota Century Code, relating to funds under the management of the state investment board; to amend and reenact sections 6-09.16-01, 6-09.16-02, 6-09.16-03, 6-09.16-04, 6-09.16-05, 6-09.16-06, 23-09.3-01.1, 23-16-01.1, 50-24.4-30, 50-30-01, 50-30-02, and 50-30-04 of the North Dakota Century Code, relating to the nursing facility alternative loan fund, the moratorium on the expansion of basic care bed capacity, the moratorium on the expansion of long-term care bed capacity, the government nursing facility funding pool, and nursing facility loans; to provide for a transfer from the nursing facility alternative grant fund; to provide a statement of legislative intent; to provide for a legislative council study; to provide an appropriation; to provide a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.16-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.16-01. (Effective through June 30, 2001) Definitions. Terms defined in chapter 50-30 have the same meaning when used in this chapter.

SECTION 2. AMENDMENT. Section 6-09.16-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.16-02. (Effective through June 30, 2001) Revolving Long-term care facility loan fund - Appropriation Continuing appropriation. A revolving loan fund must be maintained in the Bank of North Dakota for the purpose of making loans to nursing facilities, basic care facilities, or assisted living facilities; ~~or other entities providing alternatives to nursing facility care, to encourage and support conversion of nursing facilities for renovation projects.~~ All moneys transferred into the fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund are hereby appropriated for disbursement pursuant to the requirements of this chapter.

SECTION 3. AMENDMENT. Section 6-09.16-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.16-03. (Effective through June 30, 2001) Nursing Long-term care facility alternative loan fund.

1. There is hereby created a nursing long-term care facility alternative loan fund. The fund ~~shall include~~ consists of revenue transferred from the

North Dakota health care trust fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund.

2. The Bank of North Dakota shall administer the loan fund. Funds in the loan fund may be used for:
 - a. Loans as provided in this chapter and as approved by the department under chapter 50-30; and
 - b. The costs of administration of the fund; ~~and~~
 - c. ~~Repayment of federal funds if the United States department of health and human services determines that funds were inappropriately claimed under section 50-24.4-30.~~
3. Any money in the fund not required for use under subsection 2 must be transferred to the North Dakota health care trust fund.

SECTION 4. AMENDMENT. Section 6-09.16-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.16-04. (Effective through June 30, 2001) Loan application - How made. All applications for loans under this chapter must be made to the department. The department may approve the applications of qualified applicants ~~who~~ that propose projects that conform to requirements established under chapter 50-30. ~~Applications approved by the department must be forwarded to the Bank of North Dakota. Upon~~ The Bank of North Dakota shall review and approve or reject all loan applications forwarded to the Bank by the department. For applications approved by the Bank and upon final approval of the application by the Bank of North Dakota department, loans may be made from the ~~revolving~~ long-term care facility loan fund in accordance with ~~the provisions of~~ this chapter.

SECTION 5. AMENDMENT. Section 6-09.16-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.16-05. (Effective through June 30, 2001) Amount of loans - Terms and conditions. Loans in an amount not exceeding ~~eighty~~ ninety percent of project costs may be made by the Bank of North Dakota from the fund maintained pursuant to this chapter. Such loans must bear interest at a rate ~~determined by the Bank of North Dakota to be two percentage points less than the market rate for similar commercial loans, provided that no loan may bear interest at a rate less than one-half of one~~ two percent; ~~or more than seven percent,~~ of the outstanding principal balance of the loan. In consideration of the making of a loan under this chapter, each borrower shall execute a contract with the department to operate the project in accordance with standards established under chapter 50-30. The contract must also provide that if the use of the project is discontinued or diverted to purposes other than those provided in the loan application without written consent of the department, the full amount of the loan provided under this chapter immediately becomes due and payable. The Bank of North Dakota may annually deduct, as a service fee for administering the ~~revolving~~ loan fund maintained under this chapter, one-half of one percent of the principal balance of the outstanding loans from the ~~revolving~~ fund.

SECTION 6. AMENDMENT. Section 6-09.16-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.16-06. (Effective through June 30, 2004) Powers of Bank of North Dakota. The Bank of North Dakota may do all acts or things necessary to negotiate loans and preserve security under this chapter, including the power to take such security as deemed necessary, to exercise any right of redemption, and to bring suit in order to collect interest and principal due the ~~revolving loan~~ fund under mortgages, contracts, and notes executed to obtain loans under the provisions of this chapter. If the applicant's plan for financing provides for a loan of funds from sources other than the state of North Dakota, the Bank of North Dakota may take a subordinate security interest. The bank may recover from the ~~revolving loan~~ fund amounts actually expended by it for legal fees and to effect a redemption.

SECTION 7. A new subsection to section 21-10-06 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Health care trust fund.

SECTION 8. Long-term care nursing scholarship and loan repayment grant program.

1. The state health council, in cooperation with the North Dakota long term care association, shall administer the long-term care nursing scholarship and loan repayment grant program. The purpose of the program is to provide matching funds to nursing facilities for the facilities to use in recruiting and retaining nurses by providing scholarships to nursing facility staff and other individuals to obtain a nursing education and by assisting in the repayment of student loans for licensed nurses employed in a nursing facility. The state health council shall adopt rules necessary to administer the program, including rules establishing criteria regarding eligibility for and distribution of program grants.
2. An applicant for a program grant shall establish that the applicant:
 - a. Is a licensed nursing facility;
 - b. Has available matching funds equal to the amount of the grant request; and
 - c. Meets the eligibility criteria established by rule.
3. An eligible applicant may receive a program grant not exceeding five thousand five hundred dollars in the first year of the biennium. Any funds appropriated by the legislative assembly for the grant program which are remaining after the first year of the biennium may be distributed to eligible applicants in the second year of the biennium in any amount determined by the state health council.

¹⁹⁴ **SECTION 9. AMENDMENT.** Section 23-09.3-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-09.3-01.1. Moratorium on expansion of basic care bed capacity.

¹⁹⁴ Section 23-09.3-01.1 was also amended by section 1 of Senate Bill No. 2098, chapter 237.

1. Except when existing beds are converted for use by a nursing facility that converts licensed nursing facility bed capacity to basic care bed capacity or the alzheimer's and related dementia population under the pilot projects provided for in 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, 1999 2001, during the period between August 1, 1999 2001, and July 31, 2004 2003.
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, 1999 2001, to July 31, 2004 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. Existing licensed beds released by a facility which are not immediately and transferred to another facility may not be banked for future transfer to another facility must become licensed within twenty-four months of transfer.
3. Transfer of existing beds from one municipality to a tribal reservation during the period August 1, 2001, to July 31, 2003, 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 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.

¹⁹⁵ **SECTION 10. AMENDMENT.** Section 23-16-01.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹⁹⁵ Section 23-16-01.1 was also amended by section 2 of Senate Bill No. 2098, chapter 237.

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, ~~1999~~ 2001, during the period between August 1, ~~1999~~ 2001, and July 31, ~~2004~~ 2003.
2. Transfers of existing beds from one municipality to another municipality must be approved if the department of health licensing requirements are met, during the period August 1, ~~1999~~ 2001, to July 31, ~~2004~~ 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. Existing licensed beds released by a facility ~~which are not immediately and transferred to another facility may not be banked for future transfer to another facility~~ must become licensed within twenty-four months of transfer.
3. Transfer of existing beds from one municipality to a tribal reservation during the period August 1, 2001, to July 31, 2003, 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 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.

SECTION 11. AMENDMENT. Section 50-24.4-30 of the North Dakota Century Code is amended and reenacted as follows:

50-24.4-30. (~~Effective through June 30, 2001~~) Government nursing facility funding pool - Appropriations.

1. For purposes of this section:
 - a. "Fiscal period" means a twelve-month period determined by the department; and

- ~~7.~~ 8. The department of human services, subject to legislative appropriation, may make the payments described in subsection 3 for the pool amount annually determined under subsection 2, as follows:
- a. From special funds derived from federal funds and other income, the pool amount determined under subsection 2 reduced by the amount determined under subdivision b; and
 - b. From the general fund, the "state percentage" as that term is used in defining the term "federal medical assistance percentage" for purposes of title XIX of the Social Security Act [42 U.S.C. 1396; et seq.], multiplied times the pool amount determined under subsection 2.

SECTION 12. AMENDMENT. Section 50-30-01 of the North Dakota Century Code is amended and reenacted as follows:

50-30-01. (Effective through June 30, 2004 - See notes) Definitions. For purposes of this chapter:

1. ~~"Alternative to nursing facility care" means services described in the home and community-based services waiver for aged persons under medical assistance.~~
2. ~~"Assisted living facility" has the meaning provided in section 50-24.5-01, but if the term is not defined in that section, the term means a facility that:~~
 - a. ~~Makes response staff available at all times;~~
 - b. ~~Provides housing and:~~
 - (1) ~~Congregate meals;~~
 - (2) ~~Kitchen facilities in each resident's living quarters; or~~
 - (3) ~~Any combination of congregate meals and kitchen facilities in each resident's living quarters sufficient to assure each resident adequate access to meals;~~
 - c. ~~Assures provision of:~~
 - (1) ~~Personal care, therapeutic care, and social and recreational programming;~~
 - (2) ~~Supervision, safety, and security;~~
 - (3) ~~Medication services; and~~
 - (4) ~~Transportation services;~~
 - d. ~~Fosters dignity, respect, and independence by allowing, to the maximum extent feasible, each resident to determine the resident's service providers, routines of care provision, and service delivery; and~~

- e. ~~Services five or more adult residents, unrelated to the proprietor, on a specified premises not licensed under chapter 23-20 or 25-16, which meets the requirements of the national fire protection association 101 Life Safety Code, as applicable.~~
- 3. "Basic care facility" has the meaning provided in section 23-09.3-01.
- 4. "Conversion" means:
 - a. ~~The remodeling of existing space and, if necessary, the construction of additional space required to accommodate basic care facility services, assisted living facility services, or other alternatives to nursing facility care; or~~
 - b. ~~New construction of a basic care facility, assisted living facility, or other alternative to nursing facility care if existing nursing facility beds are no longer licensed and the department determines that new construction is more cost effective than the conversion of existing space.~~
- 5. 2. "Department" means the department of human services.
- 6. 3. "Medical assistance" means a program established under title XIX of the Social Security Act [42 U.S.C. 1396; et seq.] and chapter 50-24.1.
- 7. 4. "Nursing facility" has the same meaning as provided in section 50-24.4-01 for the term "nursing home".

SECTION 13. AMENDMENT. Section 50-30-02 of the North Dakota Century Code is amended and reenacted as follows:

50-30-02. (Effective through June 30, 2004 - See notes) North Dakota health care trust fund created - Appropriation Uses - Continuing appropriation. There is hereby created in the state treasury a special fund known as the North Dakota health care trust fund. The fund ~~shall include~~ consists of revenue received from ~~governmental~~ government nursing facilities for remittance to the fund under section 50-24.4-30. The department shall administer the fund and shall adopt procedures for participation by ~~governmental~~ government nursing facilities. ~~All moneys designated for the fund from whatever source derived must be deposited with the state treasurer in the North Dakota health care trust fund.~~ The state treasurer investment board shall invest such funds in interest-bearing accounts, as designated by the department moneys in the fund in accordance with chapter 21-10, and the ~~interest~~ income earned must be deposited in the North Dakota health care trust fund. All moneys deposited in the North Dakota health care trust fund are available to the department; ~~subject to legislative appropriation, for disbursement pursuant to the requirements of this chapter.;~~

- 1. Transfer to the long-term care facility loan fund, as authorized by legislative appropriation, for making loans pursuant to the requirements of this chapter.
- 2. Payment, as authorized by legislative appropriation, of costs of other programs authorized by the legislative assembly.

3. Repayment of federal funds, which are appropriated and may be spent if the United States department of health and human services determines that funds were inappropriately claimed under section 50-24.4-30.

SECTION 14. AMENDMENT. Section 50-30-04 of the North Dakota Century Code is amended and reenacted as follows:

50-30-04. (Effective through June 30, 2001 - See notes) Department to award grants or make loan guarantees Long-term care facility loans.

1. The department may award grants from the nursing facility alternative grant fund or approve loans from the nursing long-term care facility alternative loan fund established under chapter 6-09.16 for ~~capital or one-time expenditures, including startup and training expenses and operating losses for the first year:~~
 - a. ~~To any renovation projects involving a nursing facility which has been approved for at least three years as a provider under the medical assistance program to convert all or a portion of the facility licensed to provide such care to a, basic care facility, or assisted living facility, or other alternative to nursing facility care; or~~
 - b. ~~To any other entity meeting conditions established by the department to develop a basic care facility, assisted living facility, or other alternative to nursing facility care.~~
2. A nursing facility or other entity may be eligible for a grant or loan only if the basic care facility, assisted living facility, or other alternative to nursing facility care is located in an underserved area as determined by the department.
3. ~~To be eligible for a grant or loan under this section, the nursing facility or other entity approved by the department shall provide at least twenty percent of the total cost of any conversion. The department shall establish policies and procedures for certification of the required matching funds. The department's share of the total cost of An approved loan for any conversion is limited to project may not exceed one million dollars or eighty ninety percent of the project cost, whichever is less.~~
4. The department shall annually establish a calendar for receiving and evaluating proposals and awarding grants or approving loans.
5. No grant or loan application may be approved by the department unless the applicant can demonstrate that:
 - a. Conversion of the nursing facility or portion of the facility to a basic care facility, assisted living facility, or other alternative to nursing facility care may offer efficient and economical care to individuals requiring long-term care services in the area;
 - b. Basic care, assisted living services, or other alternatives to nursing facility care are unlikely to be available in the area for individuals eligible for services under the medical assistance program; and

- e. ~~The resulting reduction in the availability of nursing facility service is not expected to cause undue hardship on those individuals requiring nursing facility services.~~
3. The department shall give preference for loan approval to an applicant that is converting nursing facility bed capacity to basic care bed capacity.
6. 4. No grant may be awarded or loan may be approved unless the applicant agrees:
- a. ~~To maintain a minimum occupancy rate by individuals eligible for supplemental security income benefits provided under title XVI of the Social Security Act [42 U.S.C. 1382, et seq.]; and~~
- b. ~~To refund to repay to the nursing facility alternative grant fund or the nursing long-term care facility alternative loan fund, on an amortized basis, the amount outstanding balance of the grant or loan and any accrued interest if the applicant or its successor in interest ceases to operate a basic care facility, assisted living facility, or other alternative to nursing facility care the project or facility financed by the loan proceeds during the ten-year period after the date the applicant began operation of its the project or facility as a basic care facility, assisted living facility, or other alternative to nursing facility care ceases to maintain the agreed minimum occupancy rate or fails to commence operations within a reasonable time.~~
7. 5. In addition to other remedies provided by law or contract, the department may deduct the amount of any refund due from a recipient of ~~grant or a loan guarantee funds~~ from any money owed by the department to such recipient or the recipient's successor in interest.

SECTION 15. NURSING FACILITY ALTERNATIVE GRANT FUND - TRANSFER - GRANTS ADMINISTRATION. The state treasurer shall transfer any remaining balance in the nursing facility alternative grant fund on June 30, 2001, to the health care trust fund. The department of human services may continue making grant payments relating to grants approved during the 1999-2001 biennium under the nursing facility alternative grant fund. The department may spend moneys in the health care trust fund pursuant to legislative appropriations for the purpose of making these grant payments, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 16. NURSING FACILITY ALTERNATIVE LOANS - 1999-2001 BIENNIUM - INTEREST RATE ADJUSTMENT. The Bank of North Dakota and the department of human services shall adjust the rate of interest charged on nursing facility alternative loans approved during the biennium beginning July 1, 1999, and ending June 30, 2001, to a rate equivalent to two percent effective July 1, 2001, taking into consideration any grants approved in conjunction with the loan.

SECTION 17. LEGISLATIVE INTENT - HEALTH CARE TRUST FUND USES. It is the intent of the fifty-seventh legislative assembly that the June 30, 2003, unobligated balance in the health care trust fund and any investment earnings on that amount during the 2003-05 biennium not be appropriated but be retained in the fund to be used to continue, for periods subsequent to the 2003-05 biennium, the increased funding levels authorized in this Act for the 2001-03 biennium.

SECTION 18. APPROPRIATION - GOVERNMENT NURSING FACILITY FUNDING POOL. 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 department of human services for the purpose of making government nursing facility funding pool payments under section 50-24.4-30, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Total all funds	\$38,750,000
Less estimated income	<u>27,100,000</u>
Total general fund appropriation	\$11,650,000

SECTION 19. ADDITIONAL GOVERNMENT NURSING FACILITY FUNDING POOL PAYMENTS - CONTINUING APPROPRIATION - GENERAL FUND REPAYMENT. Any estimated income in excess of the \$27,100,000 appropriated in section 18 of this Act which becomes available based on the calculation provided for in section 50-24.4-30 is appropriated and may be spent by the department of human services for the purpose of making the additional government nursing facility fund pool payments for the biennium beginning July 1, 2001, and ending June 30, 2003. Any additional state matching funds required are appropriated and may be spent from the general fund by the department of human services for the purpose of making the additional payments, for the biennium beginning July 1, 2001, and ending June 30, 2003. Any general fund amounts spent pursuant to this section must be returned to the general fund within two days.

SECTION 20. APPROPRIATION - 1999-2001 BIENNIUM GOVERNMENT NURSING FACILITY TRANSACTION FEE. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$800,000, or so much of the sum as may be necessary, to the department of human services for the purpose of making an additional transaction fee payment to the government nursing facilities, for the period beginning with the effective date of this Act and ending June 30, 2001. Notwithstanding section 50-24.4-30, the department of human services shall make a transaction fee payment of \$400,000 to the government nursing facility in Dunseith and a transaction fee payment of \$400,000 to the government nursing facility in McVille by June 30, 2001. The additional payment relates to government nursing facility funding pool payments made before the effective date of this Act. Each government nursing facility shall use its transaction fee revenue for long-term care-related services.

SECTION 21. APPROPRIATION - ADMINISTRATIVE COSTS. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$71,158, or so much of the sum as may be necessary, to the department of human services for the purpose of defraying the administrative costs associated with the intergovernmental transfer program, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 22. APPROPRIATION - LONG-TERM CARE FACILITY LOANS. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$12,000,000, or so much of the sum as may be necessary, to the department of human services for the purpose of making transfers to the long-term care facility loan fund for loans approved under chapter 50-30, for the biennium beginning July 1, 2001, and ending June 30, 2003. Of this amount, up to \$4,960,000 may be used for commitments made during the biennium beginning July 1, 1999, and ending June 30, 2001.

SECTION 23. APPROPRIATION - NURSING HOME BED REDUCTION.

There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$4,000,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing incentives to nursing homes to reduce licensed nursing facility bed capacity for the biennium beginning July 1, 2001, and ending June 30, 2003. The department of human services may pay incentives of up to \$15,000 per bed to a nursing facility that reduces all of its licensed bed capacity, up to \$12,000 per bed to a nursing facility that reduces its licensed nursing facility bed capacity by at least eight beds and incentives of up to \$8,000 per bed to a nursing facility that reduces its licensed nursing facility bed capacity by fewer than eight beds. An incentive may not be paid for nursing facility bed capacity that is temporarily converted to basic care bed capacity. The department shall establish rules that allow nursing facilities to make offers to reduce licensed nursing facility bed capacity on a quarterly basis beginning July 1, 2001. To be eligible for an incentive, a nursing facility's offer to reduce bed capacity must be received by the department of human services by the first day of the quarter for which incentives will be approved. Within thirty days of the beginning of the quarter, the department shall inform the facility making an offer of the department's approval or disapproval of the offer. The department shall give priority for incentives to a facility that offers to reduce the entire licensed bed capacity. If offers for reducing bed capacity exceed the department's allocation of funds for incentives for the quarter, a facility that does not have its offer approved may submit the offer for consideration in a subsequent quarter.

SECTION 24. APPROPRIATION - NURSING HOME COMPENSATION

ENHANCEMENT. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$8,189,054, or so much of the sum as may be necessary, and from special funds derived from federal funds the sum of \$19,107,793, or so much of the sum as may be necessary, to the department of human services for the purpose of providing salary and benefit enhancements to nursing facility employees, or if a facility is combined with a hospital, to nursing facility and hospital employees, for the biennium beginning July 1, 2001, and ending June 30, 2003. The department of human services shall increase nursing facility payment rates to provide for these increases beginning July 1, 2001. A nursing facility may not use any moneys received under this section for the purpose of providing the facility's matching share for a long-term care nursing scholarship and loan repayment grant.

SECTION 25. APPROPRIATION - BASIC CARE COMPENSATION

ENHANCEMENT. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$202,080, or so much of the sum as may be necessary, and from special funds derived from federal funds the sum of \$471,520, or so much of the sum as may be necessary, to the department of human services for the purpose of providing salary and benefit enhancements to basic care facility employees, for the biennium beginning July 1, 2001, and ending June 30, 2003. The department of human services shall increase basic care facility payment rates to provide for these increases beginning July 1, 2001.

SECTION 26. APPROPRIATION - NURSING HOME REBASING. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$681,846, or so much of the sum as may be necessary, and from special funds derived from federal funds, the sum of \$1,590,974, or so much of the sum as may be necessary, to the department of human services for the purpose of recognizing increased costs as a result of

rebasement nursing facility limits based on cost reports for the year ending June 30, 1999, for the period beginning January 1, 2002, and ending June 30, 2003.

SECTION 27. APPROPRIATION - PERSONAL CARE ALLOWANCE FOR NURSING FACILITY AND INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED RESIDENTS. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$309,600, or so much of the sum as may be necessary, and from special funds derived from federal funds, the sum of \$708,000, or so much of the sum as may be necessary, to the department of human services for the purpose of increasing the personal care allowance for nursing home and intermediate care for the mentally retarded residents by \$10 per month, from \$40 to \$50 per month, for the period beginning January 1, 2002, and ending June 30, 2003.

SECTION 28. APPROPRIATION - PERSONAL CARE ALLOWANCE FOR BASIC CARE RESIDENTS. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$180,000, or so much of the sum as may be necessary, to the department of human services for the purpose of increasing the personal care allowance for basic care residents by \$15 per month, from \$45 to \$60 per month, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 29. LEGISLATIVE COUNCIL STUDY - LONG-TERM CARE NEEDS. The legislative council shall consider studying, during the 2001-02 interim, the long-term care needs and the nursing facility payment system in North Dakota. If studied, the legislative council shall receive progress reports and a final report from the department of human services on the statewide needs assessment and nursing facility payment system study for long-term care. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

SECTION 30. APPROPRIATION - LONG-TERM CARE NEEDS STUDY. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$241,006, or so much of the sum as may be necessary, to the department of human services for the purpose of conducting a statewide needs assessment and nursing facility payment system study for long-term care, for the period beginning with the effective date of this Act and ending January 1, 2003.

SECTION 31. APPROPRIATION - STATE DEPARTMENT OF HEALTH - LONG-TERM CARE NURSING SCHOLARSHIP AND LOAN REPAYMENT GRANT PROGRAM. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$489,500, or so much of the sum as may be necessary, to the state department of health for the purpose of making long-term care nursing scholarship and loan repayment program grants, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 32. APPROPRIATION - SERVICE PAYMENTS FOR THE ELDERLY AND DISABLED. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$6,898,302, or so much of the sum as may be necessary, to the department of human services for the purpose of making service payments for the elderly and disabled, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 33. APPROPRIATION - HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT. There is appropriated out of any moneys in the

health care trust fund in the state treasury, not otherwise appropriated, the sum of \$3,000,000, or so much of the sum as may be necessary, and from special funds derived from federal funds, the sum of \$5,055,347, or so much of the sum as may be necessary, to the department of human services for the purpose of defraying the expenses of complying with the federal Health Insurance Portability and Accountability Act or other technology projects, for the period beginning with the effective date of this Act and ending June 30, 2003.

SECTION 34. APPROPRIATION - 1999-2001 BIENNIUM NURSING FACILITY GRANTS. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$100,226, or so much of the sum as may be necessary, to the department of human services for the purpose of making payments on grants approved under the nursing facility alternative grant fund during the 1999-2001 biennium, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 35. APPROPRIATION - SENIOR CITIZEN MILL LEVY MATCHING GRANTS. There is appropriated out of any moneys in the health care trust 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 department of human services for the purpose of providing additional senior citizen mill levy matching grants, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 36. APPROPRIATION - MEDICAL ASSISTANCE - TARGETED CASE MANAGEMENT SERVICES. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$338,530, or so much of the sum as may be necessary, and from special funds derived from federal funds, the sum of \$769,220, or so much of the sum as may be necessary, to the department of human services for the purpose of making medical assistance payments for targeted case management services, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 37. APPROPRIATION - INDEPENDENT LIVING CENTER GRANTS. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing grants to independent living centers, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 38. APPROPRIATION - TRAINING GRANTS. There is appropriated out of any moneys in the health care trust fund in the state treasury, not otherwise appropriated, the sum of \$140,000, or so much of the sum as may be necessary, to the department of human services for the purpose of providing grants to organizations for training qualified service providers, for the biennium beginning July 1, 2001, and ending June 30, 2003. A qualified service provider means a county agency or independent contractor that agrees to meet standards for services and operations established by the department of human services for the provision of services to individuals receiving long-term care services in a home or community-based setting.

SECTION 39. HEALTH CARE TRUST FUND - MINIMUM BALANCE REQUIRED. Except for making payments under subsection 3 of section 50-30-02, the state treasurer may not allow expenditures or transfers from the health care trust fund that would reduce the unobligated balance in the fund below \$13,000,000 until the director of the department of human services certifies to the state treasurer that the federal health care financing administration's claim for the return of \$13,000,000

of the state's first-year payment has been resolved, for the period beginning with the effective date of this Act and ending June 30, 2003.

SECTION 40. DEPARTMENT OF HUMAN SERVICES - EMERGENCY RULEMAKING AUTHORITY. Notwithstanding subsection 6 of section 28-32-02, the department of human services may adopt interim final rules to implement this Act for the biennium beginning with the effective date of this Act and ending June 30, 2003. The department shall take appropriate measures to make the interim final rules known to every person who may be affected by them. The interim final rules are ineffective one hundred eighty days after its declared effective date unless first adopted as final rules.

SECTION 41. EMERGENCY. Sections 20, 30, 33, 39, and 40 of this Act are declared to be an emergency measure.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 432

HOUSE BILL NO. 1109

(Human Services Committee)

(At the request of the Department of Human Services)

ASSISTED LIVING FACILITY FEES AND LICENSING

AN ACT to create and enact a new section to chapter 50-24.5 and a new subsection to section 50-24.5-02 of the North Dakota Century Code, relating to registration fees, requirements, and complaints to the department of human services regarding assisted living facilities; to amend and reenact subsection 2 of section 23-09-01, subsection 1 of section 23-09.3-01, and sections 50-24.5-01 and 50-24.5-04 of the North Dakota Century Code, relating to requiring assisted living facilities to be licensed as boardinghouses, definitions, and limits on cost of services provided; to repeal section 23-09.3-03 of the North Dakota Century Code, relating to choice of pharmacy services; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 23-09-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 ~~or 50-24.5-04~~.

SECTION 2. AMENDMENT. Subsection 1 of section 23-09.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Basic care facility" means a residence, not licensed under chapter 23-16 by the department, that provides room and board to five or more individuals who are not related by blood or marriage to the owner or manager of the residence and who, because of impaired capacity for independent living, require health, social, or personal care services, but do not require regular twenty-four-hour medical or nursing services and:
 - a. Makes response staff available at all times to meet the twenty-four-hour per day scheduled and unscheduled needs of the individual; or
 - b. Is kept, used, maintained, advertised, or held out to the public as an Alzheimer's, dementia, or special memory care facility.

¹⁹⁶ **SECTION 3. AMENDMENT.** Section 50-24.5-01 of the North Dakota Century Code is amended and reenacted as follows:

50-24.5-01. (Effective through June 30, 2001) Definitions. In this chapter, unless the context otherwise requires:

1. "Aged" means at least sixty-five years of age.
2. "Assisted living" means an environment where a person lives in an apartment-like unit and receives services on a twenty-four-hour basis to accommodate that person's needs and abilities to maintain as much independence as possible.
3. "Basic care facility" means a facility defined in section 23-09.3-01 which is not owned or operated by the state.
4. "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. "Congregate housing" means housing shared by two or more persons not related to each other which is not provided in an institution.
6. "County agency" means the county social service board.
7. "Department" means the department of human services.
8. "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. "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 a person 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 person 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:

¹⁹⁶ Section 50-24.5-01 was also amended by section 1 of Senate Bill No. 2093, chapter 433.

- (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 a licensed basic care 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. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to four or more persons who are not related to the proprietor.
11. "Living independently" includes living in congregate housing. The term does not include living in an institution.
12. "Qualified service provider" means a county agency or independent contractor who agrees to meet standards for services and operations established by the department.
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.
14. "Would be eligible to receive the cash benefits except for income" refers to a person 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 person would receive if the person had no income, plus forty-five dollars.

(Effective July 1, 2001) 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.
- ~~2.~~ 3. "Assisted living facility" means any building or structure containing a facility that:
 - a. ~~Makes response staff available at all times;~~
 - b. ~~Provides housing and:~~
 - ~~(1) Congregate meals;~~
 - ~~(2) Kitchen facilities in each resident's living quarters; or~~

- (3) Any combination of congregate meals and kitchen facilities in each resident's living quarters sufficient to assure each resident adequate access to meals;
- e. Assures provision of:
 - (1) Personal care, therapeutic care, and social and recreational programming;
 - (2) Supervision, safety, and security;
 - (3) Medication services; and
 - (4) Transportation services;
 - d. Fosters dignity, respect, and independence by allowing, to the maximum extent feasible, each resident to determine the resident's service providers, routines of care provision, and service delivery; and
 - e. Serves five or more adult residents, unrelated to the proprietor, on a specified premises not licensed under chapter 23-20 or 25-16, which meets the requirements of the national fire protection association 101 Life Safety Code, as applicable.

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.

- ~~3.~~ 4. "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.].
- ~~4.~~ 5. "Congregate housing" means housing shared by two or more ~~persons~~ individuals not related to each other which is not provided in an institution.
- ~~5.~~ 6. "County agency" means the county social service board.
- ~~6.~~ 7. "Department" means the department of human services.
- ~~7.~~ 8. "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.].
- ~~8.~~ 9. "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 ~~a person~~ 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 ~~person~~ 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.
- ~~9.~~ 11. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to five or more ~~persons~~ individuals who are not related to the proprietor.
12. "Instrumental activities of daily living" means activities to support independent living including housekeeping, shopping, laundry, transportation, and meal preparation.
- ~~40.~~ 13. "Living independently" includes living in congregate housing. The term does not include living in an institution.
14. "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.
- ~~44.~~ 15. "Proprietor" means a ~~person~~ an individual responsible for day-to-day administration and management of a facility.
- ~~42.~~ 16. "Qualified service provider" means a county agency or independent contractor who agrees to meet standards for services and operations established by the department.
17. "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.

43. 18. "Related to the proprietor" means ~~a person~~ 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.
44. 19. "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.
45. 21. "Would be eligible to receive the cash benefits except for income" refers to ~~a person~~ 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 ~~person~~ individual would receive if the ~~person~~ individual had no income, plus ~~forty-five~~ sixty dollars.

SECTION 4. A new subsection to section 50-24.5-02 of the North Dakota Century Code is created and enacted as follows:

Establish a method to receive complaints related to assisted living facilities and to forward the complaints to the appropriate agency for investigation.

SECTION 5. A new section to chapter 50-24.5 of the North Dakota Century Code is created and enacted as follows:

Registration of assisted living facilities.

1. An individual, institution, organization, limited liability company, or public or private corporation keeping, operating, conducting, managing, maintaining, advertising, or using the term "assisted living" in its advertising shall register annually with the department.
2. An assisted living facility shall pay to the department an annual registration fee of seventy-five dollars for each facility. Registration fees collected under this section must be deposited in the department of human services operating fund in the state treasury. Any expenditure from the fund is subject to appropriation by the legislative assembly.
3. The department shall establish rules governing the annual registration of an assisted living facility to regulate the application for, approval, denial, revocation, and requirements of registration. The department shall involve the facilities in the rulemaking process.
4. An individual, institution, organization, limited liability company, or public or private corporation may not operate or market its facility or services as an assisted living facility unless it has registered with the department

as an assisted living facility and that registration has been approved by the department.

5. After the fifty-ninth day following the notification of noncompliance with annual registration, the department may assess a fine of up to fifty dollars per day against any individual, institution, organization, limited liability company, or public or private corporation that provides assisted living services or uses the term assisted living in its marketing without a registration approved by the department. Fines collected under this section must be deposited in the department of human services operating fund in the state treasury. Any expenditure from the fund is subject to appropriation by the legislative assembly.
6. Religious orders providing assistance with activities of daily living or instrumental activities of daily living to vowed members residing in the order's retirement housing are not subject to this chapter.

SECTION 6. AMENDMENT. Section 50-24.5-04 of the North Dakota Century Code is amended and reenacted as follows:

50-24.5-04. Services provided - Limit on cost. Services provided under this chapter must be treated as necessary remedial care to the extent those services are not covered under the medical assistance program. The cost of the services provided under this chapter to a person residing in a basic care or adult family foster care facility for which the rate charged includes room and board is limited to the rate set for services in that facility, plus ~~forty-five~~ sixty dollars, less that person's total income.

SECTION 7. REPEAL. Section 23-09.3-03 of the North Dakota Century Code is repealed.

SECTION 8. EFFECTIVE DATE. This Act becomes effective on July 1, 2001.

Approved April 13, 2001
Filed April 16, 2001

CHAPTER 433

SENATE BILL NO. 2093

(Human Services Committee)

(At the request of the Department of Human Services)

VULNERABLE PERSONS AID DEFINITIONS

AN ACT to amend and reenact subdivision e of subsection 2 of section 50-24.5-01 of the North Dakota Century Code, relating to the definitions for the aid to vulnerable aged, blind, and disabled persons program; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁷ **SECTION 1. AMENDMENT.** Subdivision e of subsection 2 of section 50-24.5-01 of the North Dakota Century Code, as effective July 1, 2001, is amended and reenacted as follows:

- e. Serves five or more adult residents, unrelated to the proprietor, on a specified premises not licensed under chapter ~~23-20~~ 23-16 or 25-16, which meets the requirements of the national fire protection association 101 Life Safety Code, as applicable.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 2001.

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

Approved March 6, 2001

Filed March 6, 2001

¹⁹⁷ Section 50-24.5-01 was also amended by section 3 of House Bill No. 1109, chapter 432.

CHAPTER 434

SENATE BILL NO. 2129 (Human Services Committee) (At the request of the Attorney General)

ABANDONED INFANTS

AN ACT to create and enact a new section to chapter 50-25.1 of the North Dakota Century Code, relating to abandoned infants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

Abandoned infant - Hospital procedure - Reporting immunity.

1. As used in this section:
 - a. "Abandoned infant" means an abandoned infant as defined in section 27-20-02 and which has been left at a hospital in an unharmed condition.
 - b. "Hospital" means a facility licensed under chapter 23-16.
2. A parent of an infant may abandon the infant at any hospital. An agent of the parent may leave an abandoned infant at a hospital with the parent's consent. Neither the parent nor the agent is subject to prosecution under sections 14-07-15 and 14-09-22 for leaving the abandoned infant at a hospital.
3. A hospital shall accept an infant abandoned or left under this section. The hospital may request information regarding the parents and shall provide the parent or the agent with a medical history form and an envelope with the hospital's return address. Neither the parent nor the agent is required to provide any information.
4. The hospital shall provide the parent or the agent with a numbered identification bracelet to link the parent or the agent to the abandoned infant. Possession of an identification bracelet does not entitle the bracelet holder to take custody of the abandoned infant on demand. If an individual possesses a bracelet linking the individual to an abandoned infant left at a hospital under this section and parental rights have not been terminated, possession of the bracelet creates a presumption that the individual has standing to participate in a protection services action brought under this chapter or chapter 27-20. Possession of the bracelet does not create a presumption of maternity, paternity, or custody.
5. The hospital may provide the parent or the agent with any relevant information, including:
 - a. Information about the safe place for abandoned infant programs;

- b. Information about adoption and counseling services; and
 - c. Information about whom to contact if reunification is sought.
6. Within twenty-four hours of receiving an abandoned infant under this section, the hospital shall report to the department, as required by section 50-25.1-03, that an abandoned infant has been left at the hospital. The report may not be made before the parent or the agent leaves the hospital.
 7. The hospital and its employees and agents are immune from any criminal or civil liability for accepting an abandoned infant under this section.
 8. Upon receiving a report of an abandoned infant left at a hospital under this section, the department shall proceed as required under this chapter if it appears that the abandoned infant was not harmed, except the department may not attempt to identify or contact the parent or the agent. If it appears the abandoned infant was harmed, the department shall initiate an assessment of the matter as required by law.
 9. If an individual claiming to be the parent or the agent contacts the department and requests to be reunited with the abandoned infant, the department may identify or contact the individual as required under this chapter and all other applicable laws. If an individual contacts the department seeking information only, the department may attempt to obtain information regarding the identity and medical history of the parents and may provide information regarding the procedures in an abandoned infant case. The individual is under no obligation to respond to the request for information, and the department may not attempt to compel response to investigate the identity or background of the individual.

Approved March 28, 2001
Filed March 28, 2001

CHAPTER 435**SENATE BILL NO. 2095**

(Human Services Committee)

(At the request of the Department of Human Services)

**CHILDREN'S HEALTH INSURANCE INCOME
PROVISIONS**

AN ACT to amend and reenact subsection 1 of section 50-29-02 of the North Dakota Century Code, relating to implementation of the income provisions of the children's health insurance program by the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 50-29-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Prepare, submit, and implement the plan that includes eligibility determinations for self-employed applicants, where adjusted gross income or loss means the adjusted gross income or loss as computed for an individual for federal income tax purposes under the Internal Revenue Code, based on the average of the previous three years of adjusted gross income, which means the adjusted gross income as computed for an individual for federal income tax purposes under the Internal Revenue Code lower of either:
 - a. The previous one year of adjusted gross income or loss, less any earned or unearned income on the tax return, plus any current earned or unearned income; or
 - b. The average of the previous three years of adjusted gross income or loss, less the average of earned or unearned income for each of the previous three years, plus any current earned or unearned income;

Approved April 19, 2001

Filed April 19, 2001

CHAPTER 436**SENATE BILL NO. 2174**

(Senator T. Mathern)

MEDICAL ASSISTANCE STUDY

AN ACT to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. MEDICAL ASSISTANCE - LEGISLATIVE COUNCIL STUDY.

The legislative council shall consider studying the feasibility of altering North Dakota medical assistance requirements to permit the disregard of income of the spouse of a disabled individual up to the amount of the cap established under section 1924(d)(3)(C) of the Social Security Act [42 U.S.C. 1396r-5(d)(3)(C)]. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved March 19, 2001

Filed March 19, 2001

CHAPTER 437**SENATE BILL NO. 2354**

(Senators Krauter, Erbele, Heitkamp)
(Representatives Fairfield, Hunskor, Renner)

ALTERNATIVES-TO-ABORTION SERVICES STUDY

AN ACT to provide for a legislative council study of an alternatives-to-abortion services program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - ALTERNATIVES-TO-ABORTION SERVICES PROGRAM. During the 2001-02 interim, the legislative council shall consider studying the feasibility and desirability of an alternatives-to-abortion services program that would provide information, counseling, and support services to assist women to choose childbirth and to make informed decisions regarding the choice of adoption or parenting. The study must include a review of how federal funds received under title X of the Public Health Service Act of 1970 are spent in the state and a review of the continuum of care and access to services across the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved May 4, 2001
Filed May 4, 2001

CHAPTER 438

SENATE BILL NO. 2307

(Senators Grindberg, Fischer, Robinson)
(Representatives S. Kelsh, Koppang, Kroeber)

STATEWIDE REIMBURSEMENT SYSTEM REPORT

AN ACT to require the department of human services and developmental disabilities services providers to make recommendations regarding a statewide reimbursement system and to report to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. DEPARTMENT OF HUMAN SERVICES AND DEVELOPMENTAL DISABILITIES SERVICES PROVIDERS - RECOMMENDATION - REPORT TO LEGISLATIVE COUNCIL. The department of human services, in cooperation with developmental disabilities services providers representing each of the eight human service regions, shall prepare a joint recommendation for consideration by the fifty-eighth legislative assembly regarding a new statewide developmental disability services provider reimbursement system. During the 2001-02 interim, the department of human services shall report quarterly to the legislative council regarding the progress in preparing a joint recommendation under this section.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 439

HOUSE BILL NO. 1114

(Political Subdivisions Committee)

(At the request of the Department of Human Services)

HUMAN SERVICES STUTSMAN COUNTY LAND SALE

AN ACT to authorize the department of human services to sell certain land in Stutsman County, North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Transfer of land authorized. The department of human services may sell the land described in subsection 1 for the price and on the terms as determined by the department of human services and may convey the land described in subsection 2 to the city of Jamestown, North Dakota, for two hundred dollars per acre or the most recent appraised value, whichever is higher. The land to be sold is a part of the grounds of the state hospital described as follows:

1. A tract of land located within the SW 1/4 of Section 1, Township 139 North, Range 64 West of the Fifth Principal Meridian, Stutsman County, North Dakota, being more particularly described as follows:

Commencing at the southwest corner of said Section 1; thence S90 degrees 00'00"E, along the south line of the SW 1/4 of said Section 1, 75.00 feet to the point of beginning; thence N0 degrees 27'26"W, parallel with the west line of the SW 1/4 of said Section 1, 1,204.23 feet to a point on the south line of an existing parcel; thence N89 degrees 50'00"E, along the south line of said existing parcel, 44.60 feet; thence N1 degrees 42'11"E, along the easterly line of said existing parcel, 1,003.47 feet to a point on the southerly right-of-way line of Interstate Highway 94; thence southeasterly, along a 5 degrees 00'00" spiral right-of-way curve, said curve having a chord bearing of S72 degrees 51'18"E and a chord length of 81.38 feet, a spiral length of 81.38 feet to the beginning of a circular right-of-way curve, said curve having a chord bearing of S82 degrees 10'15"E and a chord length of 900.88 feet; thence along said circular right-of-way curve an arc length of 904.21 feet; thence S2 degrees 09'28"W, 2062.12 feet to a point on the south line of the SW 1/4 of said Section 1; thence N90 degrees 00'00"W, along the south line of the SW 1/4 of said Section 1, 957.43 feet to the point of beginning.

Bearings for the above description are based on an assumed bearing of N90 degrees 00'00"W along the south line of said Section 1. Said tract contains 47.37 acres more or less.

2. A tract of land located within the NE 1/4 of Section 1, Township 139 North, Range 64 West of the Fifth Principal Meridian, Stutsman County, North Dakota, being more particularly described as follows:

Commencing at a point 1,710 feet south of the Northwest corner of the NE 1/4 of Section 1, Township 139 North, Range 64 West, to

the point of beginning; thence East 600 feet; thence North 480 feet; thence West 600 feet; thence South 480 feet to the point of beginning, all of said lines running parallel to the section lines.

3. Sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer of the land described in subsection 2.

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

Approved April 5, 2001
Filed April 5, 2001

SALES AND EXCHANGES

CHAPTER 440

HOUSE BILL NO. 1067

(Agriculture Committee)

(At the request of the Public Service Commission)

AUCTIONEER AND CLERK LICENSES AND FEES

AN ACT to amend and reenact section 51-05.1-01.1 of the North Dakota Century Code, relating to auctioneer's and auction clerk's license renewals and fees; and to repeal section 51-05.1-06 of the North Dakota Century Code, relating to auctioneer and auction clerk license renewal requirements.

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 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 by January thirty-first must be assessed an additional twenty-five dollar fee.

Before a license is issued to ~~any~~ an auctioneer or auction clerk, the applicant ~~shall~~ 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 size of the bond must be stated.

SECTION 2. REPEAL. Section 51-05.1-06 of the North Dakota Century Code is repealed.

Approved March 6, 2001

Filed March 6, 2001

CHAPTER 441

HOUSE BILL NO. 1324 (Representatives Hawken, Timm) (Senators Fischer, G. Nelson)

SEMITRAILER WHOLESALER AND RETAILER RELATIONSHIP

AN ACT to amend and reenact sections 51-07-01, 51-07-01.1, 51-07-02, and 51-07-03 of the North Dakota Century Code, relating to the relationship between semitrailer wholesalers and retailers.

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 implement or car dealer may recover price of articles upon discontinuance of contract by wholesaler or retail dealer. ~~Whenever any~~ If ~~a person, firm, corporation, or limited liability company~~ engaged in the business of selling and retailing farm implements and ~~repair~~ parts for farm implements, or in the business of selling and retailing automobiles ~~or~~, trucks, or semitrailers, or ~~repair~~ parts for ~~automobiles or trucks~~, the same, enters into a written contract ~~whereby~~ such ~~under which the~~ retailer agrees to maintain a stock of parts or complete or whole machines, or attachments with ~~any~~ a wholesaler, manufacturer, or distributor of farm implements, machinery, attachments, or ~~repair~~ parts for the same, or automobiles, trucks, or semitrailers, or ~~repair~~ parts for the same, and ~~either such the~~ wholesaler, manufacturer, or distributor or the retailer desires to cancel or discontinue the contract, ~~such the~~ wholesaler, manufacturer, or distributor shall pay to ~~such the~~ retailer, unless the retailer should desire to keep ~~such the~~ merchandise, a sum equal to one hundred percent of the net cost of all current unused complete farm implements, machinery, attachments, automobiles, ~~and~~ trucks, and semitrailers, including transportation charges ~~which that~~ have been paid by ~~such the~~ retailer, and eighty-five percent of the current net prices on ~~repair~~ parts, including superseded parts listed in current price lists or catalogs which parts had previously been purchased from ~~such the~~ wholesaler, manufacturer, or distributor, and held by ~~such the~~ retailer on the date of the cancellation or discontinuance of ~~such the~~ contract or thereafter received by ~~such the~~ retailer from the wholesaler, manufacturer, or distributor. The wholesaler, manufacturer, or distributor shall also pay ~~such the~~ retailer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of ~~such the~~ parts back to the wholesaler, manufacturer, or distributor. Upon the payment of the sum equal to one hundred percent of the net cost of ~~such the~~ farm implements, machinery, attachments, automobiles, ~~and~~ trucks, and semitrailers plus transportation charges ~~which that~~ have been paid by the retailer and eighty-five percent of the current net prices on ~~repair~~ parts, plus freight charges ~~which that~~ have been paid by the retailer, plus five percent of the current net prices for handling and loading costs on ~~repair~~ parts only, the retailer shall pass the title to such the farm implements, farm machinery, attachments, automobiles, trucks, semitrailers, or ~~repair~~ parts ~~shall pass~~ to the manufacturer, wholesaler, or distributor making ~~such the~~ payment, and ~~such the~~ manufacturer, wholesaler, or distributor is entitled to the possession of ~~such the~~ farm implements, machinery, attachments, automobiles, trucks, semitrailers, or ~~repair~~

parts. 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.

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 ~~repair~~ parts so that the retailer can elect to pursue either the retailer's contract remedy or the remedy provided ~~herein~~, and an 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 ~~herein~~ in this section as to those farm implements, machinery, attachments, automobiles, trucks, semitrailers, and ~~repair~~ parts not affected by the contract remedy.

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 a continuing contract, and all other contracts entered ~~into~~ or renewed after June 30, 1987. Any contract in force and effect on July 1, 1987, which by its own terms will terminate on a date subsequent thereto is governed by the law as it existed before July 1, 1987.

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 to be done in good faith - Definition of good cause.

1. Any manufacturer, wholesaler, or distributor of farm implements, machinery, and ~~repair parts therefor~~ for the same, or of automobiles, trucks, semitrailers, and ~~repair parts therefor~~ for the same, who enters into a contract with any person, ~~firm, corporation, or limited liability company~~ engaged in the business of selling and retailing farm implements and ~~repair parts for farm implements~~, or in the business of selling and retailing automobiles ~~or~~, trucks, or semitrailers, or ~~repair parts for automobiles or trucks whereby such~~ the same by which the retailer agrees to maintain a stock of parts or complete or whole machines or attachments, automobiles, or trucks, or semitrailers may not terminate, cancel, or fail to renew ~~any such~~ the contract with the person, ~~firm, corporation, or limited liability company~~ 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, ~~firm, corporation, or limited liability company~~ in the business of selling and retailing 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. Further, the determination by the manufacturer, wholesaler, or distributor of good cause for ~~such the~~ termination, cancellation, or failure to renew must be made in good faith.

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 is liable for all special and general damages sustained by the plaintiff, including the costs of the litigation and reasonable attorneys' fees for prosecuting the action and the plaintiff, when 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. Any contract in force and effect on July 1, 1987, which by its terms will terminate on a date subsequent thereto is governed by the law as it existed before July 1, 1987.

SECTION 3. AMENDMENT. Section 51-07-02 of the North Dakota Century Code is amended and reenacted as follows:

51-07-02. Prices of implements, machinery, automobiles, and parts - How determined. The prices of farm implements, machinery, and ~~repair~~ parts ~~therefor~~ for the same, and of automobiles, trucks, semitrailers, and ~~repair~~ parts ~~therefor~~ for the same, required to be paid to any retail dealer as provided in section 51-07-01, must be determined by taking one hundred percent of the net cost on farm implements, machinery, attachments, automobiles, ~~and~~ trucks, and semitrailers and eighty-five percent of the current net price of ~~repair~~ parts ~~therefor~~ for the same as shown upon the manufacturer's, wholesaler's, or distributor's price lists or catalogs in effect at the time ~~such~~ the contract is canceled or discontinued.

SECTION 4. 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 manufacturer, wholesaler, or distributor of farm machinery, farm implements, and ~~repair~~ parts for farm machinery and farm implements, or of automobiles, trucks, semitrailers, and ~~repair~~ parts ~~therefor~~ for the same, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to ~~such~~ the dealer as is required by section 51-07-01, or refuses to supply farm machinery, farm implements, and ~~repair~~ parts for farm machinery and farm implements or automobiles ~~or~~ trucks, or semitrailers, or ~~repair~~ parts ~~therefor~~ for the same, to any retailer of ~~such~~ the products, who may have a retail sales contract dated after June 30, 1987, or a contract with no expiration date or a continuing contract in force or effect on July 1, 1987, with ~~such~~ the manufacturer, wholesaler, or distributor, ~~such~~ the manufacturer, wholesaler, or distributor shall be liable in a civil action to be brought by ~~such~~ the retailer for one hundred percent of the net cost of ~~such~~ the farm implements, machinery, attachments, automobiles, and trucks, plus transportation charges ~~which~~ that have been paid by the retailer and eighty-five percent of the current net price of ~~repair~~ parts, plus five percent for handling and loading plus freight charges ~~which~~ that have been paid by the retailer. 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.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 442

HOUSE BILL NO. 1427

(Representatives Nicholas, Nottestad, Wald, Warner)
(Senators Kelsh, Tollefson)

INSURANCE CLAIMS FOR EXCESSIVE CHARGES PROHIBITED

AN ACT to amend and reenact section 51-07-24 of the North Dakota Century Code, relating to prohibition of insurance claims for excessive charges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-07-24 of the North Dakota Century Code is amended and reenacted as follows:

51-07-24. Insurance claims for excessive charges - Penalty.

1. A person who sells goods or services paid for by the consumer from proceeds of an insurance policy that provides coverage for physical damage to automobiles may not:
 - a. Advertise or promise to provide a good or service; ~~paid for by the consumer from proceeds of an insurance policy that provides coverage for physical damage to automobiles, and to as an incentive,~~ pay or waive all or part of any applicable insurance deductible, ~~or to pay a rebate in an amount equal to all or part of any applicable insurance deductible; and~~ or
 - b. Knowingly charge an amount for the good or service that exceeds the usual and customary charge by that person for the good or service by an amount equal to or greater than all or part of the applicable insurance deductible paid by that person on behalf of an insured or remitted to an insured by that person as a rebate.
2. A person who is insured under an insurance policy that provides coverage for physical damage to automobiles may not knowingly submit a claim under the policy based on charges that are in violation of subsection 1 or may not knowingly allow a claim in violation of subsection 1 to be submitted, unless the person promptly notifies the insurer of the excessive charges.
3. A violation of this section is a class B misdemeanor.

Approved April 3, 2001
Filed April 3, 2001

CHAPTER 443

HOUSE BILL NO. 1033

(Legislative Council)
(Agriculture Committee)

ANTITRUST INVESTIGATIONS

AN ACT to amend and reenact section 51-08.1-06 of the North Dakota Century Code, relating to an investigation of an antitrust violation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-08.1-06 of the North Dakota Century Code is amended and reenacted as follows:

51-08.1-06. Official investigation.

1. If the attorney general has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation for violation of this chapter, the attorney general may serve upon the person, before bringing any action in the district court, a written demand to appear and be examined under oath, to answer written interrogatories under oath, and to produce the document or object for inspection and copying. The demand must:
 - a. Be served upon the person in the manner required for service of process in this state;
 - b. Describe the nature of the conduct constituting the violation under investigation;
 - c. Describe the document or object with sufficient definiteness to permit it to be fairly identified;
 - d. Contain a copy of the written interrogatories;
 - e. Prescribe a reasonable time at which the person must appear to testify, within which to answer the written interrogatories, and within which the document or object must be produced, and advise the person that a reasonable opportunity will be afforded for examination and notation of corrections upon any transcript of an oral examination, that a copy of one's own transcript can be obtained upon payment of reasonable charges, and that objections to or reasons for not complying with the demand may be filed with the attorney general at or before the designated time;
 - f. Specify a place for the taking of testimony or for production and designate a person who shall be custodian of the document or object; and
 - g. Contain a copy of subsection 2.

2. If a person objects to or otherwise fails to comply with the written demand served upon that person under subsection 1, the attorney general may file in the district court of the county in which the person resides, or in which the person maintains a principal place of business within this state, a petition for an order to enforce the demand. Notice of hearing the petition and a copy of the petition must be served upon the person, who may appear in opposition to the petition. If the court finds that the demand is proper, there is reasonable cause to believe there has been a violation of this chapter, and the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand, subject to modification the court may prescribe. Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.
3. Any procedure, testimony taken, or material produced under this section must be kept confidential by the attorney general before bringing an action against a person under this chapter for the violation under investigation, unless confidentiality is waived by the person being investigated and the person who has testified, answered interrogatories, or produced material, or disclosure is authorized by the court.
4. ~~The investigatory authority provided by this section may be invoked by the attorney general only after a district court has reviewed the information gathered by the attorney general and has determined that there is reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to a possible violation of this chapter. The submission of the information by the attorney general to the district court must be made ex parte and must be kept confidential until such time as the matter may be the subject of an action filed pursuant to section 51-08.1-08.~~

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 444

SENATE BILL NO. 2370

(Representatives Kliniske, Weisz)
(Senators G. Nelson, Krebsbach, Stenehjem)

CURRENCY EXCHANGE BUSINESSES AUTHORIZED

AN ACT to provide for authorization of currency exchange businesses; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Currency exchange - Penalty.

1. A nonbanking institution may engage in the business of a currency exchange if:
 - a. The institution does not contract with another person to manage the currency exchange business; however, this does not prohibit the business from employing individuals to operate a currency exchange business;
 - b. The institution displays in a prominent manner on the premises of the business the fees charged to exchange currency;
 - c. The maximum fees charged to exchange currency are limited to any direct cost of verification fees and:
 - (1) The greater of five percent of the face amount or five dollars, for cashing a draft, personal check, payroll check, traveler's check, or money order; and
 - (2) The greater of three percent of the face amount or five dollars, for cashing a state public assistance check or a federal social security check;
 - d. The institution does not accept money or currency for deposit or act as bailee or agent of persons to hold money or currency in escrow for others for any purpose; and
 - e. The institution does not exchange currency on the premises of a charitable gaming site.
2. For purposes of this section, "currency exchange" means cashing a check, draft, money order, or traveler's check or issuing a money order or traveler's check as an agent for another, for a fee. The term does not include providing these services incidental to a primary business if there is not a charge for cashing a check or draft.
3. This section does not authorize a business to make any type of loan, including a deferred presentment service transaction, payday loan, cash advance, payday cash advance, or motor vehicle title loan.

4. A nonbanking institution may not accept a postdated check in a currency exchange transaction.
5. A person violating this section is guilty of a class B misdemeanor.

Approved April 12, 2001

Filed April 12, 2001

CHAPTER 445

SENATE BILL NO. 2091

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

FRANCHISE EXEMPTIONS AND SECURITIES ORDERS

AN ACT to amend and reenact subsection 2 of section 51-19-04 and subdivisions f and g of subsection 2 of section 51-19-13 of the North Dakota Century Code, relating to franchise registration exemptions and the powers of the securities commissioner regarding the issuance of orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 51-19-04 of the North Dakota Century Code is amended and reenacted as follows:

2. The offer or sale of a franchise by a franchisee for the franchisee's own account or the offer or sale of the entire area franchise owned by a subfranchisor for the subfranchisor's own account is exempted from the provisions of section 51-19-03 if the sale is not effected by or through a franchisor; provided, however, that no ~~franchisee or~~ subfranchisor may offer or sell a franchise under this subsection without first obtaining the written approval of the commissioner. The commissioner may require that the ~~franchisee or~~ subfranchisor and the franchisor provide the prospective purchaser and the commissioner with such information and disclosures as the commissioner deems necessary or appropriate to carry out the purposes of this chapter. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee.

SECTION 2. AMENDMENT. Subdivisions f and g of subsection 2 of section 51-19-13 of the North Dakota Century Code are amended and reenacted as follows:

- f. If, in the opinion of the commissioner, the offer of any franchise is subject to registration under this chapter and it is being or has been offered for sale without the offer first being registered, the commissioner may order the franchisor or offeror of the franchise to desist and refrain from the further offer or sale of the franchise unless and until the offer has been duly registered under this chapter. In addition to any other remedy authorized by this chapter, the commissioner may impose by order and collect a civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. If, within fifteen days after the order has been ~~made~~ served on the respondent, a request for a hearing is filed in writing by the person to whom the order was directed, a hearing must be held. ~~Unless the hearing is commenced~~ within fifteen business days after the request is made ~~or unless the person~~ persons affected ~~consents~~ consent to a later date; the order is rescinded. If a request for

hearing is not made within the fifteen days permitted herein, the order is final.

- g. If, in the opinion of the commissioner, the offer of any franchise exempt from registration under this chapter is being or has been offered for sale without complying with section 51-19-04 or subsection 2 of section 51-19-11, the commissioner may order the franchisor or offeror of the franchise to desist and refrain from the further offer or sale of the franchise unless and until an offer is made in compliance with this chapter. In addition to any other remedy authorized by this chapter, the commissioner may impose by order and collect a civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. If, within fifteen days after the order has been ~~made~~ served on the respondent, a request for a hearing is filed in writing by the person to whom the order was directed, a hearing must be held. ~~Unless the hearing is commenced within fifteen business days after the date, the order is rescinded.~~ If a request for hearing is not made within the fifteen days permitted herein, the order is final.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 446

SENATE BILL NO. 2290

(Senators Klein, Schobinger)
(Representatives Hunskor, Severson, Weisz)

RECREATION VEHICLE FRANCHISES

AN ACT to amend and reenact sections 51-20-01 and 51-20-02 of the North Dakota Century Code, relating to recreation vehicle franchises.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-20-01 of the North Dakota Century Code is amended and reenacted as follows:

51-20-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Contractual arrangement" means a written franchise or other written agreement, by whatever name such agreement may be called, between a distributor and a dealer whereby the dealer agrees to sell at retail and service the distributor's recreation vehicles in a given location or locations, whether or not exclusively with respect to a given geographic area, and the distributor authorizes the dealer to sell, or sell and service, and agrees to supply an inventory of recreation vehicles, and, if the dealer is to perform service, an inventory of parts for those vehicles.
2. "Dealer" means a person, partnership, corporation, limited liability company, or other business entity which sells at retail and services new recreation vehicles.
3. "Distributor" means any manufacturer, wholesaler, or distributor of recreation vehicles who has a contractual arrangement with a dealer in such vehicles.
4. "Recreation vehicle" includes snowmobiles as defined in section 39-24-01, plus trailers for transporting same when those trailers are furnished by the same distributor who furnishes the snowmobiles; all-terrain vehicles as defined in section 39-29-01; motorcycles as defined in subsection 39 of section 39-01-01; travel trailers, which term means vehicles without motive power designed for recreational use as living or sleeping quarters for people and which do not exceed ~~thirty-five~~ forty feet [~~40.67~~ 12.19 meters] in length; and motorboats, whether propelled by an inboard or outboard marine engine, plus any outboard marine engines and boat trailers.
5. "Repair parts" includes accessories.

SECTION 2. AMENDMENT. Section 51-20-02 of the North Dakota Century Code is amended and reenacted as follows:

51-20-02. Recreation vehicle dealers may recover value of vehicles or parts from distributor in certain cases.

1. Whenever:

- a. A distributor cancels or discontinues a contractual arrangement; or
- b. A dealer cancels or discontinues a contractual arrangement because the distributor entered into a contractual arrangement with another dealer to sell in the same geographical area for which the first dealer had an exclusive dealership;

the dealer may recover from the distributor the net cost to the dealer of all new and unused recreation vehicles, and parts for such vehicles, held by the dealer at the time of cancellation or discontinuance of the contractual arrangement. The dealer may enforce the right given under this section by civil action commenced in the district court in the county where the dealer has the dealer's principal place of business in North Dakota. If a dealer has entered a written contract with a distributor wherein the dealer agrees to maintain a stock of recreation vehicles, repair parts, or both recreation vehicles and repair parts, and either the dealer or the distributor desires to cancel or discontinue the contract, the distributor shall pay to the dealer, unless the dealer desires to keep the recreation vehicles or repair parts, the following amounts:

- a. A sum equal to one hundred percent of the net cost of all current year, unused, and complete recreation vehicles;
 - b. Eighty-five percent of the current net prices on repair parts, including the superseded parts listed in current price lists or catalogs, if the superseded parts have previously been purchased from the distributor and were in the dealer's inventory on the date of cancellation or discontinuance of the contract or were thereafter received by the dealer from the distributor;
 - c. A sum equal to five percent of the current net price of all parts returned as reimbursement for handling, packing, and loading of those parts; and
 - d. Any freight charges on the equipment or repair parts paid by the dealer.
2. When a distributor has made payment in accordance with this section, title to the recreation vehicles and repair parts must pass to the distributor and the distributor is entitled to possession of the recreation vehicles and repair parts. The provisions of this section are supplemental to any contractual rights which the dealer may have with respect to reimbursement for ~~equipment~~ recreation vehicles and parts inventory held by the dealer at cancellation or discontinuance of a contractual arrangement. The dealer may elect to pursue the dealer's rights under the contractual arrangement and under this section, ~~but the dealer's total recovery may not exceed the net cost of the equipment and parts remaining in the dealer's hands at the time of cancellation or discontinuance, plus legal costs awarded by the court.~~ An election by a dealer to pursue a contractual remedy does not bar the dealer's right to the remedy provided by this section with respect to those pieces of recreation vehicles and repair parts not affected by the contract remedy.

3. This section applies to every contract now in effect which has no stated expiration date and to all other contracts entered after July 31, 2001. Contracts in force and effect on July 31, 2001, which by their terms will terminate on a date subsequent to July 31, 2001, are governed by the law existing before August 1, 2001.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 447

HOUSE BILL NO. 1203

(Representatives Wald, Aarsvold, Monson)
(Senators Bowman, Tomac)

FARM EQUIPMENT NONCONFORMITY REMEDIES

AN ACT to provide for remedies for nonconformities in farm equipment; and to repeal section 51-07-07 of the North Dakota Century Code, relating to voiding or rescinding contracts for the purchase of farm machinery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Collateral charges" means those additional charges to a consumer not directly attributable to a manufacturer's suggested retail price label for farm machinery.
2. "Comparable farm machinery" means an identical or reasonably equivalent piece of farm machinery.
3. "Consumer" means the purchaser, other than for the purposes of resale of new farm machinery primarily used for agricultural purposes; any person to whom the new farm machinery is transferred for the same purposes during the duration of an express warranty applicable to that new farm machinery; and any other person entitled by the terms of the warranty to enforce the obligations of the warranty.
4. "Express warranty" means any written affirmation of fact or promise made by a manufacturer to a consumer in connection with the sale of new farm machinery which relates to the nature of the material or workmanship or will meet a specified level of performance over a specified period of time. The term does not include an implied warranty.
5. "Farm machinery" means any self-propelled equipment or machinery used for agricultural purposes being transferred for the first time from a manufacturer, distributor, or new farm machinery dealer which has not been registered or titled and which is offered for sale, barter, or exchange by a dealer who is franchised to sell, barter, or exchange that particular make of new farm machinery. The term includes farm machinery propelled by power other than muscular power but does not include off-road vehicles other than self-propelled equipment and machinery used for agricultural purposes.
6. "Manufacturer" means any person engaged in the manufacturing or assembling of new farm machinery as a regular business.
7. "Nonconformity" means any condition of the farm machinery which makes it impossible to use for the purpose for which it was intended.
8. "Reasonable allowance for consumer use" means:

- a. That amount attributable to use by the consumer before the consumer's first report of the nonconformity to the manufacturer or its authorized dealers;
- b. That amount attributable to use by the consumer during any period subsequent to the first report of nonconformity when the farm machinery is not out of service by reason of repair of the reported nonconformity; and
- c. That amount attributable to use by the consumer of the farm machinery provided by the manufacturer or its authorized dealer while the machine is out of service by reason of repair of the reported nonconformity, but not less than the fair rental value of the farm machinery.

SECTION 2. Law applicable to breach of new farm machinery warranties - Report of nonconformity required - Repairs - Duty of manufacturer or agent.

Notwithstanding any other provision of law, a sale of new farm machinery is governed by this Act. For the purposes of this Act, if new farm machinery does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer or its agent during the term of the express warranties or during the period of one year following the date of original delivery of the new farm machinery to the consumer, whichever period expires earlier, the manufacturer or its agent shall make any necessary repairs to conform the new machinery to the express warranties, notwithstanding the fact that the repairs are made after the expiration of the term or the one-year period.

SECTION 3. Replacement of farm machinery or refund of purchase price - Allowance deducted for consumer's use - Refund. If the manufacturer or its agent cannot conform the new farm machinery to any applicable express warranty by repairing or correcting any default or condition that substantially impairs the use or market value of the new farm machinery to the consumer after a reasonable number of attempts, the manufacturer shall give the consumer the option of having the manufacturer either replace the new farm machinery with a comparable new farm machinery acceptable to the consumer, or take title of the machine from the consumer and refund to the consumer the full purchase price, including all reasonably incurred collateral charges, less a reasonable allowance for the consumer's use of the machine. The subtraction of a reasonable allowance for use shall apply when either a replacement or refund of the new farm machinery occurs. Refunds must be made to the consumer and lienholder of record, if any, as their interests may appear.

SECTION 4. Affirmative defenses.

1. It is an affirmative defense to any claim under this Act that:
 - a. An alleged nonconformity does not substantially impair the use, market value, or safety of the farm machinery;
 - b. A nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of farm machinery by a consumer;
 - c. A claim by a consumer was not filed in good faith; or
 - d. Any other affirmative defense allowed by law.

2. It is presumed that a reasonable number of attempts have been undertaken to conform new farm machinery to the applicable express warranties if within the terms, conditions, or limitations of the express warranty, or during the period of one year following the date of original delivery of the new farm machinery to a consumer, whichever expires earlier, either:
 - a. The same nonconformity has been subject to repair five or more times by the manufacturer or its agents and the nonconformity continues to exist; or
 - b. The new farm machinery is out of service by reason of repair of the nonconformity by the manufacturer or its agents for a cumulative total of thirty or more working days, exclusive of downtime for routine maintenance as prescribed by the manufacturer, since delivery of the new farm machinery to the consumer. The thirty-day period may be extended by a period of time during which repair services are not available to the consumer because of conditions beyond the control of the manufacturer or its agents.

SECTION 5. Information on remedies to be furnished consumer - Notice of complaint to manufacturer required - Manufacturer's duties.

1. The manufacturer shall provide information for consumer complaint remedies with each new farm machinery. Before taking action under this Act, a consumer shall give written notification to the manufacturer of the need for the repair of the nonconformity to allow the manufacturer an opportunity to cure the alleged defect. The manufacturer immediately shall notify the consumer of a reasonably accessible repair facility of a franchised new farm machinery dealer to conform the new farm machinery to the express warranty. After delivery of the new farm machinery to an authorized repair facility by the consumer, the manufacturer shall conform the new farm machinery to the express warranty within thirty calendar days in appropriate seasonal use times and within sixty days in other times. The agriculture commissioner shall designate appropriate seasonal use times for all machinery covered by this Act. Upon notification from the consumer that the new farm machinery has not been conformed to the express warranty, the manufacturer shall inform the consumer if an informal dispute settlement procedure has been established by the manufacturer. If prior notice by the manufacturer of an informal dispute settlement procedure has been given, no further notice is required. If any repair that may be required under any warranty takes more than fourteen working days to complete, the manufacturer shall supply at no cost a like piece of farm machinery for use by the consumer if requested by the consumer during the time of repair. The manufacturer shall reimburse any costs incurred by a dealer under this Act.
2. An action brought under this Act must be commenced within six months following expiration of the terms, conditions, or limitations of the express warranty or within eighteen months following the date of original delivery of the new farm machinery to a consumer, whichever is earlier. However, if a consumer resorts to an informal dispute settlement procedure, any action must be commenced within ninety days following the final action of any panel established pursuant to the procedure. If an

action is brought under this Act, the prevailing party may recover any court costs and reasonable attorney's fees.

SECTION 6. Application - Not to affect prior contracts - Dealers reimbursed for labor. This Act applies to any new farm machinery sold after July 31, 2001, and does not invalidate, impair, or otherwise infringe upon the specific requirements of any contract between a dealer and a manufacturer entered before August 1, 2001. However, if warranty repair work is performed for a consumer by a farm equipment dealer under a manufacturer's express warranty, the manufacturer shall reimburse the dealer at an hourly labor rate that is the same or greater than the hourly labor rate the dealer currently charges consumers for nonwarranty repair work. The dealer may accept the manufacturer's or supplier's warranty labor reimbursement terms and conditions in lieu of the above.

SECTION 7. REPEAL. Section 51-07-07 of the North Dakota Century Code is repealed.

Approved April 3, 2001
Filed April 3, 2001

SOCIAL SECURITY

CHAPTER 448

HOUSE BILL NO. 1251

(Representative Keiser)

PARTNERSHIP AND LLC UNEMPLOYMENT COMPENSATION

AN ACT to create and enact a new subdivision to subsection 18 of section 52-01-01 of the North Dakota Century Code, relating to unemployment compensation treatment of partnerships and limited liability companies; and to amend and reenact subsection 14 and paragraph 2 of subdivision a of subsection 17 of section 52-01-01 of the North Dakota Century Code, relating to unemployment compensation coverage of managers of limited liability companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁸ **SECTION 1. AMENDMENT.** Subsection 14 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

14. "Employee" means every individual, whether ~~male, female,~~ citizen, alien, or minor, who performs services for an employer in an employment subject to the North Dakota Unemployment Compensation Law and includes an officer of a corporation and a manager of a limited liability company that is treated as a corporation for purposes of federal income taxation or a manager of a limited liability company who is not a member.

¹⁹⁹ **SECTION 2. AMENDMENT.** Paragraph 2 of subdivision a of subsection 17 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

- (2) ~~Any manager~~ Certain managers of a limited liability ~~company~~ companies. If a limited liability company manager is employed by ~~the~~ a limited liability company in which one-fourth or more of the ownership interest, however

¹⁹⁸ Section 52-01-01 was also amended by section 2 of House Bill No. 1251, chapter 448, section 3 of House Bill No. 1251, chapter 448, section 1 of House Bill No. 1319, chapter 450, section 1 of House Bill No. 1450, chapter 449, and section 2 of House Bill No. 1450, chapter 449.

¹⁹⁹ Section 52-01-01 was also amended by section 1 of House Bill No. 1251, chapter 448, section 3 of House Bill No. 1251, chapter 448, section 1 of House Bill No. 1319, chapter 450, section 1 of House Bill No. 1450, chapter 449, and section 2 of House Bill No. 1450, chapter 449.

designated, is owned or controlled by the manager or by the manager's parent, child, spouse, or by any combination of them, the limited liability company with the concurrence of the manager may exclude that manager's service from employment as of the first day of January of any calendar year if, during January of that year, the limited liability company files a written application to exclude the manager's service from employment. This exclusion from employment does not apply to any limited liability company that is wholly owned by or operates as an Indian tribe, state or local government, or nonprofit organization with respect to services performed for those entities which are required by federal law to be covered under the North Dakota unemployment compensation law.

²⁰⁰ **SECTION 3.** A new subdivision to subsection 18 of section 52-01-01 of the North Dakota Century Code is created and enacted as follows:

Service performed by an owner of a general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or a limited liability company, unless the organization is treated as a corporation for purposes of federal income taxation.

Approved April 13, 2001
Filed April 13, 2001

²⁰⁰ Section 52-01-01 was also amended by section 1 of House Bill No. 1251, chapter 448, section 2 of House Bill No. 1251, chapter 448, section 1 of House Bill No. 1319, chapter 450, section 1 of House Bill No. 1450, chapter 449, and section 2 of House Bill No. 1450, chapter 449.

CHAPTER 449

HOUSE BILL NO. 1450 (Representatives Severson, Dosch)

UNEMPLOYMENT COMPENSATION DEFINITIONS AND BENEFITS

AN ACT to create and enact a new subdivision to subsection 15 of section 52-01-01, a new subdivision to subsection 17 of section 52-01-01, and a new section to chapter 52-04 of the North Dakota Century Code, relating to definitions for unemployment compensation purposes and financing of benefits paid to employees of Indian tribes; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰¹ **SECTION 1.** A new subdivision to subsection 15 of section 52-01-01 of the North Dakota Century Code is created and enacted as follows:

The term "employer" includes an Indian tribe for which service in employment as defined under the North Dakota unemployment compensation law is performed.

²⁰² **SECTION 2.** A new subdivision to subsection 17 of section 52-01-01 of the North Dakota Century Code is created and enacted as follows:

The term "employment" includes service performed in the employ of an Indian tribe, as defined in section 3306(u) of the Federal Unemployment Tax Act, provided the service is excluded from "employment" as defined in Federal Unemployment Tax Act solely by reason of section 3306(c)(7) of the Federal Unemployment Tax Act, and is not otherwise excluded from employment under the North Dakota unemployment compensation law. For purposes of this subdivision, the exclusions from employment in subdivision h is applicable to services performed in the employ of an Indian tribe.

SECTION 3. A new section to chapter 52-04 of the North Dakota Century Code is created and enacted as follows:

²⁰¹ Section 52-01-01 was also amended by section 1 of House Bill No. 1251, chapter 448, section 2 of House Bill No. 1251, chapter 448, section 3 of House Bill No. 1251, chapter 448, section 1 of House Bill No. 1319, chapter 450, and section 2 of House Bill No. 1450, chapter 449.

²⁰² Section 52-01-01 was also amended by section 1 of House Bill No. 1251, chapter 448, section 2 of House Bill No. 1251, chapter 448, section 3 of House Bill No. 1251, chapter 448, section 1 of House Bill No. 1319, chapter 450, and section 1 of House Bill No. 1450, chapter 449.

Financing benefits paid to employees of Indian tribes.

1. Benefits based on service in employment with an Indian tribe are payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other service subject to the North Dakota unemployment compensation law.
2.
 - a. Indian tribes or tribal units subdivisions, subsidiaries, or business enterprises wholly owned by the Indian tribe, subject to the North Dakota unemployment compensation law, shall pay contributions under the same terms and conditions as all other subject employers, unless it elects to pay into the state unemployment fund amounts equal to the amount of benefits attributable to service in the employ of the Indian tribe.
 - b. Indian tribes electing to make payments in lieu of contributions must make such election in the same manner and under the same conditions as provided in sections 52-04-18 and 52-04-19.1. Indian tribes may determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.
 - c. Indian tribes or tribal units must be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.
 - d. An Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions must, within thirty days after the effective date of its election, execute and file with the bureau a surety bond approved by the bureau.
3.
 - a. Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety days of receipt of the bill causes the Indian tribe to lose the option to make payments in lieu of contributions, as described in subsection 2, for the following tax year unless payment in full is received before contribution rates for the next tax year are computed.
 - b. An Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision a, is entitled to have the option reinstated if, after a period of one year, all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.
 - c. Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the bureau have been exhausted, causes services performed for the tribe to not be treated as employment for purposes of subsection 17 of section 52-01-01.
 - d. The bureau may determine that an Indian tribe that loses coverage under subdivision c may have services performed for the tribe

again included as employment, for purposes of subsection 17 of section 52-01-01 if all contributions, payments in lieu of contributions, penalties and interest have been paid.

- e. The bureau will notify the United States internal revenue service and the United States department of labor of a termination or reinstatement of coverage made under subdivisions c and d.
4. Notices of payment and reporting delinquency to Indian tribes or their tribal units must include information that failure to make full payment within the prescribed timeframe:
 - a. Will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act;
 - b. Will cause the Indian tribe to lose the option to make payments in lieu of contributions; and
 - c. May cause the Indian tribe to be excepted from the definition of employer, as provided in subsection 15 of section 52-01-01, and services in the employ of the Indian tribe, as provided in subsection 17 of section 52-01-01, to be excepted from employment.
 5. Benefits paid that are attributable to service in the employ of an Indian tribe must be financed as provided in section 52-04-19.1.

SECTION 4. EFFECTIVE DATE. This Act is retroactively effective to December 21, 2000.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 450

HOUSE BILL NO. 1319

(Representatives Koppelman, Grumbo, Kasper)
(Senators Bercier, Christmann, Grindberg)

CORPORATION AND LLC UNEMPLOYMENT COMPENSATION

AN ACT to amend and reenact paragraphs 1 and 2 of subdivision a of subsection 17 of section 52-01-01 of the North Dakota Century Code, relating to unemployment compensation coverage for corporations and limited liability companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰³ **SECTION 1. AMENDMENT.** Paragraphs 1 and 2 of subdivision a of subsection 17 of section 52-01-01 of the North Dakota Century Code are amended and reenacted as follows:

- (1) Any officer of a corporation. If a corporate officer is employed by a corporation in which one-fourth or more of the ownership interest, however designated, is owned or controlled by the officer or by the officer's parent, child, or spouse, or by any combination of them, the corporation with the concurrence of the officer may exclude that officer's service from employment as of the first day of January of any calendar year if, during January of that year, the corporation files a written application to exclude the officer's service from employment or as of the formation of the corporation if, within sixty days of the formation, the corporation files a written application to exclude the officer's service from employment.
- (2) Any manager of a limited liability company. If a limited liability company manager is employed by the limited liability company in which one-fourth or more of the ownership interest, however designated, is owned or controlled by the manager or by the manager's parent, child, spouse, or by any combination of them, the limited liability company with the concurrence of the manager may exclude that manager's service from employment as of the first day of January of any calendar year if, during January of that year, the limited liability company files a written application to exclude the manager's service from employment or as of formation of the limited liability company if, within sixty days of the formation,

²⁰³ Section 52-01-01 was also amended by section 1 of House Bill No. 1251, chapter 448, section 2 of House Bill No. 1251, chapter 448, section 3 of House Bill No. 1251, chapter 448, section 1 of House Bill No. 1450, chapter 449, and section 2 of House Bill No. 1450, chapter 449.

the limited liability company files a written application to exclude the manager's service from employment. This exclusion from employment does not apply to any limited liability company that is wholly owned by or operates as an Indian tribe, state or local government, or nonprofit organization with respect to services performed for those entities which are required by federal law to be covered under the North Dakota unemployment compensation law.

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 451

HOUSE BILL NO. 1084

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

JOB INSURANCE TRUST FUND AND REPORT

AN ACT to amend and reenact section 52-02-17 of the North Dakota Century Code, relating to the job insurance trust fund and a report to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-02-17 of the North Dakota Century Code is amended and reenacted as follows:

52-02-17. Trust fund balance - Report to legislative council. ~~The job insurance trust fund balance is to be maintained at a level of at least forty million dollars bureau shall report to the legislative council before March first of each year the actual trust fund balance and the targeted modified average high cost multiplier, as of December thirty-first of the previous year. In addition, the report must include a projected trust fund balance for the next three years. If the fund balance is ever projected to go below forty million dollars, job service North Dakota shall notify the members of the budget section, and at the next meeting of the budget section job service is to present a report on the condition of the fund, the circumstances leading to the decrease in the fund balance, and a proposal on how to increase the fund balance back to the minimum balance of forty million dollars.~~

Approved March 19, 2001

Filed March 19, 2001

CHAPTER 452

HOUSE BILL NO. 1471

(Representatives Ekstrom, Berg, Pietsch)
(Senators D. Mathern, T. Mathern)

UNEMPLOYMENT COMPENSATION EMPLOYER RATES

AN ACT to amend and reenact subsection 3 of section 52-04-05 of the North Dakota Century Code, relating to unemployment compensation employer rates; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁴ **SECTION 1. AMENDMENT.** Subsection 3 of section 52-04-05 of the North Dakota Century Code is amended and reenacted as follows:

3. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. During the building of the trust fund reserve, the rate assigned to an employer may not exceed one hundred thirty percent of the previous year's rate for that employer and an employer may not receive more than a ten percent decrease in that employer's rate from the previous year's rate, for the calendar years 2000, 2001, and 2002. However, this rate limitation provision for calendar years 2000, 2001, and 2002 does not apply to an experience-rated employer that was a new employer the previous year, a negative employer that was a positive employer the previous year, a positive employer that was a negative employer the previous year, an employer that has failed to file a report, a new employer, and an employer that chose to make payments in lieu of contributions. During the building of the trust fund reserve for calendar years 2000, 2001, and 2002, a negative employer that was a negative employer the previous year may not make excess contributions under

²⁰⁴ Section 52-04-05 was also amended by section 1 of House Bill No. 1087, chapter 453, and section 4 of Senate Bill No. 2017, chapter 42.

subsection 4 of section 52-04-06 to become a positive employer. The executive director may provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a thirty percent reduction to that employer's rate for any year if that employer has in place a plan approved by the bureau which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer account back into a negative status.

- b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:
- (1) For each calendar year new employers must be assigned a rate that is one hundred fifty percent of the positive employer maximum rate or a rate of one percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.
 - (2) New employers in construction services must be assigned the negative employer maximum rate.
 - (3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the two-digit major group provided in the standard industrial classification manual, in accordance with established classification practices found in the standard industrial classification manual issued by the executive office of the president, office of management and budget.

SECTION 2. EFFECTIVE DATE. This Act is retroactively effective to January 1, 2000.

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

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 453

HOUSE BILL NO. 1087

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION CLASSIFICATION AND RECORDS

AN ACT to amend and reenact subsections 3 and 4 of section 52-04-05, section 52-04-08, and subsection 1 of section 52-04-11.1 of the North Dakota Century Code, relating to unemployment compensation employer industrial classification, employer experience record, employer experience record transfers, and corporate officer personal liability; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁵ **SECTION 1. AMENDMENT.** Subsections 3 and 4 of section 52-04-05 of the North Dakota Century Code are amended and reenacted as follows:

3. a. Except as otherwise provided in this subsection, an employer's rate may not be less than the negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year. If an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the twelve-consecutive-calendar-month period ending September thirtieth of the preceding calendar year. During the building of the trust fund reserve, the rate assigned to an employer may not exceed one hundred thirty percent of the previous year's rate for that employer and an employer may not receive more than a ten percent decrease in that employer's rate from the previous year's rate, for the calendar years 2000, 2001, and 2002. The executive director may provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a thirty percent reduction to that employer's rate for any year if that employer has in place a plan approved by the bureau which addresses substantive changes to that employer's business operation and ensures that

²⁰⁵ Section 52-04-05 was also amended by section 1 of House Bill No. 1471, chapter 452, and section 4 of Senate Bill No. 2017, chapter 42.

any rate reduction provided will not put the employer account back into a negative status.

- b. An employer that does not qualify under subdivision a is subject to a rate determined as follows:
 - (1) For each calendar year new employers must be assigned a rate that is one hundred fifty percent of the positive employer maximum rate or a rate of one percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.
 - (2) New employers in construction services must be assigned the negative employer maximum rate.
 - (3) Assignment by the bureau of an employer's industrial classification for the purposes of this section must be the ~~two-digit~~ three-digit major group provided in the ~~standard~~ North American industrial classification system manual, in accordance with established classification practices found in the ~~standard~~ North American industrial classification system manual, issued by the executive office of the president, office of management and budget. Employers who are liable for coverage before August 1, 2001, remain under an industrial classification under the two-digit major group provided in the standard industrial classification manual unless they are classified in the construction industry within the standard industrial classification code.
4. An employer who has ceased to be liable for contributions shall continue its established experience rating account if it again becomes liable within three years from the date that it ceased to be liable providing that the employer's experience record has not been transferred in accordance with section 52-04-08. Such employer's rate, however, must be determined in accordance with subsection 3.

SECTION 2. AMENDMENT. Section 52-04-08 of the North Dakota Century Code is amended and reenacted as follows:

52-04-08. Succession to predecessor's experience record. An employing unit that in any manner acquires all or part of the organization, business, trade, or assets of another employer and continues essentially the same business activity of the whole or part transferred, must upon request be transferred in accordance with such regulations as the bureau may prescribe, the whole or appropriate part of the experience record, reserve balance, and benefit experience of the preceding employer. Provided that if the predecessor files a written protest against such transfer within fifteen days of being notified of the successor's application, the transfer will not be made ~~without opportunity for a hearing.~~

When an employing unit in any manner acquires all or part of the organization, business, trade, or assets of another employer, the bureau shall

transfer all or the appropriate part of the experience record, reserve balance, whether positive or negative, and benefit experience of such predecessor to the successor if it finds that (a) the predecessor was owned or controlled by or owned or controlled the successor directly or indirectly, by legally enforceable means or otherwise or (b) both the predecessor and successor were owned or controlled either directly or indirectly, by legally enforceable means or otherwise, by the same interests.

When a part of an employer's experience record reserve account and benefit experience is to be transferred under this section, the portion of the experience record and reserve account transferred must be in the same ratio to the total experience record and reserve account as the average annual payroll of the transferred organization, trade, business, or assets is to the total average annual payroll of the predecessor.

An employing unit's experience record may not be transferred in an amount that results in the successor and predecessor portions totaling more than one hundred percent of the predecessor's history.

SECTION 3. AMENDMENT. Subsection 1 of section 52-04-11.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Any officer, director, or any employee having twenty percent ownership interest of a corporation and any manager, governor, or employee having twenty percent ownership interest of a limited liability company, that is an employer under the North Dakota Unemployment Compensation Law who has control of or supervision over the filing of and responsibility for filing contribution reports or making payment of contributions under the North Dakota Unemployment Compensation Laws, and who ~~willfully~~ fails to file the reports or to make payments as required, is personally liable for contributions or reimbursement, including interest, penalties, and costs in the event the corporation or limited liability company does not pay to the bureau those amounts for which the employer is liable.

Approved March 13, 2001
Filed March 13, 2001

CHAPTER 454

HOUSE BILL NO. 1086

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION RISK ADJUSTMENT RATE

AN ACT to amend and reenact subsection 6 of section 52-04-06 of the North Dakota Century Code, relating to the risk adjustment rate for unemployment compensation contributions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 52-04-06 of the North Dakota Century Code is amended and reenacted as follows:

6. If an employer has a quarterly taxable payroll in excess of fifty thousand dollars and at least three times its established average annual payroll; or the average annual payroll is zero, and the employer's cumulative lifetime reserve balance is positive, then the tax rate for that employer is one hundred fifty percent of the positive employer maximum rate in effect that year or a rate of one percent, whichever is greater, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year. If the employer's cumulative lifetime reserve balance is negative, then the tax rate for that employer is the negative employer maximum rate of contribution in effect that year, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 455

HOUSE BILL NO. 1085

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

IMPACT PROJECT INCREMENTAL BONDS

AN ACT to amend and reenact section 52-04-06.1 of the North Dakota Century Code, relating to impact project incremental bonds under the unemployment compensation system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-04-06.1 of the North Dakota Century Code is amended and reenacted as follows:

52-04-06.1. Incremental bond for impact projects Construction project risk protection.

1. Any person, firm, corporation, or limited liability company and every general contractor which will employ or contract for the employment of or which is employing, directly or indirectly through agents, independent contractors or subcontractors on any project in North Dakota this state with an estimated construction cost of at least ~~twenty-five~~ fifty million dollars including physical construction and site preparation but excluding design and engineering, a majority of which is planned to be completed or discontinued within a period of seven years, and which will require the employment of at least two hundred fifty people is subject to this section. Each employing unit working on The general or prime contractor, or the owner in those situations in which there is no general or prime contractor, of a project which that meets the criteria specified under this section shall pay post the bond or irrevocable letter of credit required in subsection 2 before commencement of construction work on the project and shall report annually, within thirty days of the anniversary date the project becomes subject to this section, to the bureau any change in contract bids within the state as may have been determined under subsection 2 the construction costs of projects subject to this section.
2. If the bureau determines that the project is or will be within the criteria stated by this section, the bureau shall ~~estimate the total job insurance contributions which the employing units will make under the North Dakota Unemployment Compensation Law based on the average estimated number of covered employees during the course of the project.~~ The bureau shall also estimate the total benefits which will be required at the completion of the project, assuming that fifty percent of covered employees will claim benefits following completion or discontinuance of the project. If estimated benefits exceed estimated contributions, the bureau shall assess and collect from each employing unit an additional amount of one-half percent times the successful bid amount on the project awarded to each employing unit but not to exceed one-half percent times the total amount allowed under all bids accepted under the project. The amount is in addition to any other contribution

required under the law and must be treated as incremental bond payments to ensure payment for all benefits ultimately claimed. The payments are not contributions until the ultimate determination of liability is made under subsection 3. The bureau shall amend the amount assessed under this subsection in accordance with any increases in contract bids reported by an employing unit under subsection 1. Any employing unit failing to comply with this subsection may be enjoined by the bureau from engaging or continuing in business until all required payments are made require the general or prime contractor, or the owner in those situations in which there is no general or prime contractor, for whom the project is being constructed, on behalf of each employing unit, to post a bond executed by a surety company authorized to do business in the state or an irrevocable letter of credit from a federal deposit insurance corporation insured state or nationally chartered bank authorized to do business in the state which will insure payment for all benefits claimed by employees of all employing units working on the project. The bureau may adjust the amount of bond or irrevocable letter of credit required under this subsection to cover any significant increases or decreases in project construction costs reported by the general or prime contractor or owner. If any general or prime contractor or owner fails to comply with this subsection, the bureau may apply to any court of this state within the jurisdiction in which the contractor or owner is found, located, or transacts business to obtain an order to compel the general or prime contractor or owner to post the required bond or irrevocable letter of credit required under this subsection. Any failure to obey an order of the court may be punished by the court as a contempt of court.

3. The amounts collected from each employing unit under this section must be credited to individual interest bearing incremental bond trust accounts established by the bureau at the Bank of North Dakota. Eighteen The amount of bond or irrevocable letter of credit must be the difference between the estimated benefits paid and estimated contributions. The estimation of contributions expected must be made as follows: multiply the current year's negative employer minimum rate or six percent, whichever is greater, times the current year's taxable wage base times the estimated number of employees on the project using figures from project plans, times the number of years between the start date and the estimated completion date of the project. The estimation of benefits paid must be made as follows: the ratio of benefits charged to contributions paid in the most recent three fiscal years by employers in the construction industry multiplied by the estimated contributions.
4. Thirty months after the completion or discontinuance of the project or eighteen months after the employing unit completes its phase of the work, the bureau shall determine the total benefits paid to employees of the employing unit or units and if, If the total amount paid to the employees of the unit or units exceeds the total amount of contributions collected from the units under the North Dakota Unemployment Compensation Law exceeds total, the general or prime contractor or the owner shall pay the total amount of benefits paid to the employees of the units; the difference plus accrued interest must be refunded to the appropriate unit or units but not exceeding the amount paid under this subsection plus accrued interest. The amount not refunded must be credited to the unemployment compensation fund which exceeded the

total amount of contributions collected from the unit or units. If the general or prime contractor or the owner does not pay the payment requirement, job service North Dakota shall collect the payment from the surety company that executed the surety bond or bank that issued the irrevocable letter of credit.

4. Upon completion of the contract requiring a bond in excess of one thousand two hundred fifty dollars, a contractor may receive a credit of ten percent of the total bond for every twenty percent of the total wages which were paid to individuals who at the time of hire were North Dakota residents. Upon completion of the contract requiring a bond of one thousand two hundred fifty dollars or less, a contractor may receive a credit of ten percent of the total bond for every ten percent of the total wages which were paid to individuals who at the time of hire were North Dakota residents. For the purposes of this subsection, a person may be considered a resident provided the person has earned in covered employment in North Dakota as defined in title 52, the sum of two thousand dollars during the past four completed calendar quarters preceding the date of employment or can provide evidence of having resided in the state during the past four completed calendar quarters preceding the date of employment.
5. Any employing unit, whether contractor, subcontractor, or otherwise, which in turn subcontracts a portion of its contract, may upon application to the bureau and proof of such subcontract receive an adjustment on its bond in direct proportion to the amount of such subcontract.
6. Failure of any employing unit, whether contractor, subcontractor, or otherwise, to inform the bureau of the issuance of a subcontract or if any subcontractor fails to pay the bond required under this section shall cause the contractor to be liable for payment of the subcontractor bond and any unpaid subcontractor contributions due on the projects.
7. 5. For the purposes of this section, a project includes all entities which that employ or contract for the employment of, or is employing directly or indirectly through agents, independent contractors, or subcontractors; regardless of the number of employees that any particular employing unit may have to perform services on a project, if the overall project involves the employment of at least two hundred fifty persons in the aggregate. In this situation, each Each employing unit, whether contractor, subcontractor, or otherwise, involved in the project is subject to this section.
8. 6. The bureau is authorized to adopt necessary rules for the effective administration and enforcement of this section Each employing unit having employees working on a project subject to this section shall maintain separate records for all employment on the project showing each individual's name, social security number, wages paid, and the dates the wages were paid. The employers shall submit separate reports from other employment subject to the North Dakota Unemployment Compensation Law under a separate reporting account established for the project.
9. 7. This section applies to projects begun after June 30, 1987. A project must be deemed to have commenced under this section at the time that

work begins under the first contract that has been let for any phase or type of work on the project for which bids are let after August 1, 2001.

8. The determination of whether a project is subject to this section must be made in the same manner as provided for in section 52-04-17.
9. This section does not apply to any project in which the state is the owner or contractor.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 456

HOUSE BILL NO. 1083

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION BENEFIT DISQUALIFICATION

AN ACT to amend and reenact subsection 1 of section 52-06-02 of the North Dakota Century Code, relating to disqualification for purposes of determining unemployment compensation benefits; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

1. For the week in which the individual has left the individual's most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as the individual:
 - a. Can demonstrate that the individual has earned remuneration for personal services in employment equivalent to at least eight times the individual's weekly benefit amount as determined under section 52-06-04; and
 - b. Has not left the individual's most recent employment under disqualifying circumstances.

A temporary employee of a temporary help firm is deemed to have left employment voluntarily if the employee does not contact the temporary help firm for reassignment before filing for benefits. Failure to contact the temporary help firm is not deemed a voluntary leaving of employment unless the claimant was advised of the obligation to contact the temporary help firm upon completion of an assignment and advised that unemployment benefits may be denied for failure to contact the temporary help firm. As used in this subsection, "temporary employee" means an employee assigned to work for a client of a temporary help firm; and "temporary help firm" means a firm that hires that firm's own employees and assigns these employees to a client to support or supplement the client's work force in a work situation such as employee absence, temporary skill shortage, seasonal workload, a special assignment, and a special project.

This subsection does not apply if the bureau determines that the individual in an active claim filing status accepted work which the individual could have refused with good cause under section 52-06-36 and terminated such employment with the same good cause and within the first ten weeks after starting work.

This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception does not apply unless the individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits paid under this exception may not be charged against the account of the employer from whom the individual became separated as a result of the illness or injury. The bureau may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual may be charged fees of any kind for the cost of such second opinion.

This subsection does not apply if the individual left the most recent employment because of an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.

For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily and without good cause attributable to the employer.

For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times the individual's weekly benefit amount.

This subsection does not apply if the individual leaves work which is two hundred road miles [321.87 kilometers] or more, as measured on a one-way basis, from the individual's home to accept work which is less than two hundred road miles [321.87 kilometers] from the individual's home provided the work is a bona fide job offer with a reasonable expectation of continued employment.

This subsection does not apply if the individual voluntarily leaves most recent employment to accept a bona fide job offer with a base period employer who laid off the individual and with whom the individual has a demonstrated job attachment. For the purposes of this exception, "demonstrated job attachment" requires earnings in each of six months during the five calendar quarters before the calendar quarter in which the individual files the claim for benefits.

SECTION 2. EFFECTIVE DATE. This Act is retroactively effective to January 1, 2001.

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

Approved March 6, 2001
Filed March 6, 2001

CHAPTER 457

SENATE BILL NO. 2337

(Senators Lee, D. Mathern)
(Representatives Berg, Koppang, Severson)

SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM

AN ACT to create and enact chapter 52-06.1 of the North Dakota Century Code, relating to a shared work unemployment compensation program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 52-06.1 of the North Dakota Century Code is created and enacted as follows:

52-06.1-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Affected employee" means an employee who was continuously employed as a member of the affected unit, for at least six months, on a full-time basis, before submission of the shared work plan.
2. "Affected unit" means a specified department, shift, or other unit of two or more employees which is designated by an employer to participate in a shared work plan.
3. "Approved shared work plan" means an employer's shared work plan that meets the requirements of this chapter and which the bureau approves in writing.
4. "Fringe benefit" includes health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, and any other analogous employee benefit that is provided by an employer.
5. "Normal weekly hours of work" means forty hours or the average obtained by dividing the total number of hours worked per week during the preceding twelve-week period by the number twelve, whichever is less.
6. "Participating employee" means an employee who works a reduced number of hours under an approved shared work plan.
7. "Participating employer" means an employer that has an approved shared work plan in effect.
8. "Regular unemployment compensation" means benefits payable under chapter 52-06.

9. "Shared work benefit" means unemployment compensation benefits, excluding benefits payable to federal civilian employees and to ex-servicemen under Public Law 94-183, Section 2(42), as amended [89 Stat. 1059; 5 U.S.C. 8501 et seq., as amended], payable to an individual under this section for weeks of reduced work under an approved shared work plan.
10. "Shared work employer" means an employer with a shared work plan in effect. An individual who or an employing unit that succeeds to or acquires, under section 52-04-08, an organization, a trade, or a business with a shared work plan in effect automatically becomes a shared work employer and adopts the shared work plan if the individual or employing unit certifies to shared work benefits under the previously approved shared work plan.
11. "Shared work plan" means an employer's written plan approved by the bureau under which a group of employees whose normal weekly hours of work are reduced, in order to prevent employees from being laid off due to lack of work.
12. "Shared work unemployment compensation program" means a program designed to reduce unemployment and stabilize the work force by allowing certain employees to collect unemployment compensation benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding proportionate reduction in wages.

52-06.1-02. Employer qualification for shared work program.

1. An employer that wishes to participate in the shared work unemployment compensation program shall submit a signed shared work plan to the bureau for approval. As a condition for approval, a participating employer shall agree to furnish the bureau with reports relating to the operation of the shared work plan as requested by the bureau. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the bureau and shall report the findings to the bureau.
2. The bureau may approve a shared work plan if the plan:
 - a. Identifies the employees in the affected unit by name and social security number, the usual weekly hours of work, proposed wage and hour reduction, and any other information that the bureau may require;
 - b. Applies and identifies to one specific affected unit;
 - c. Includes a certified statement by the employer that for the duration of the shared work plan the reduction in the normal weekly hours of work of the employees in the affected unit is in lieu of layoffs that otherwise would result in at least as large a reduction in the total normal weekly hours of work;
 - d. Specifies an expiration date that is no more than one year from the date the employer submits the shared work plan for approval, except that on written request by the employer, the bureau may

- approve an extension of the shared work plan for a period of not more than one year from the date of the request;
- e. Reduces the normal weekly hours of work for an employee in the affected unit by not less than five percent and not more than seventy percent, and the reduction in hours in the affected unit are spread equally among employees in the affected unit;
 - f. Will not serve as a subsidy of seasonal employment during the off-season, as a subsidy for intermittent employment, nor as a subsidy of employers that have traditionally used part-time employees; and
 - g. Is approved in writing by the collective bargaining agent for each collective bargaining agreement that covers any employee in the affected unit.
3. To qualify, the employer must have and maintain at least fifty full-time employees.
 4. To qualify, the employer must have filed all reports required to be filed under the unemployment compensation law for all past and current periods and must have paid all contributions, benefit cost payments, interest, and penalty charges or if a reimbursing employer must have made all payments in lieu of contributions due for all past and current periods and interest and penalty charges.
 5. To qualify, a contributing employer must be eligible for a rate computation under subdivision a of subsection 3 of section 52-04-05, and may not be a negative account employer as defined under subdivision b of subsection 3 of section 52-04-05.
 6. A shared work plan is effective on the date specified in the plan or on the first Sunday following the date on which the plan is approved by the bureau, whichever is later. The shared work plan expires at the end of the twelfth full calendar month after the plan's effective date or on the date specified in the plan if that date is earlier; provided, the plan is not previously revoked by the bureau. If a shared work plan is revoked by the bureau, the plan terminates on the date specified in the bureau's written order of revocation.
 7. The bureau shall approve or disapprove the proposal within thirty days of receipt of the proposal by the bureau. The bureau shall notify the employer of the reasons for denial of a shared work plan within ten days of the determination.
 8. Disapproval of a plan may be reconsidered at the discretion of the executive director of job service North Dakota. Approval of a shared work plan may be revoked if the approval was based, in whole or in part, upon information that was false or misleading.
 9. An employer may modify a shared work plan created under this section to meet changed conditions if the modification conforms to the basic provisions of the shared work plan as approved by the bureau. The employer shall report the changes made to the shared work plan in writing to the bureau before implementing the changes. If the original

shared work plan is substantially modified, the bureau shall reevaluate the shared work plan and may approve the modified shared work plan if the modified plan meets the requirements for approval under subsection 2. The approval of a modified shared work plan does not affect the expiration date originally set for that shared work plan. If substantial modifications cause the shared work plan to fail to meet the requirements for approval, the bureau shall deny approval to the modifications as provided by subsection 7.

10. The bureau may terminate a shared work plan for good cause if the bureau determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program.

52-06.1-03. Employee qualification.

1. Notwithstanding any other provision of the unemployment compensation law, an individual is unemployed and is eligible for shared work benefits in any week in which the individual, as an employee in an affected unit, works for less than the individual's normal weekly hours of work in accordance with an approved shared work plan under subsection 2 of section 52-06.1-02 in effect for that week.
2. An individual is eligible to receive shared work benefits with respect to any week if, in addition to meeting the requirements of regular unemployment compensation as modified by subsection 7, the bureau finds that:
 - a. The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;
 - b. The individual is able to work and is available for additional hours of work or full-time work with the participating employer;
 - c. The individual's normal weekly hours of work have been reduced, in accordance with the shared work plan, not less than five percent but not more than seventy percent, with a corresponding proportionate reduction in wages; and
 - d. The individual's normal weekly hours of work and wages have been reduced as described in subdivision c for a waiting period of one week that occurs within the period the shared work plan is in effect, which period includes the week for which the individual is claiming shared work benefits.
3. An individual may not receive shared work benefits and regular unemployment compensation benefits in an amount exceeding the maximum total amount of benefits payable to that individual in a benefit year as provided by sections 52-06-04 and 52-06-05.
4. The bureau may not pay an individual shared work benefits for more than twenty-six weeks, whether or not consecutive, in any benefit year.
5. If an employer approves time off and the worker has performed some work during the week, the individual is eligible for shared work benefits

based on the combined work and paid leave hours for that week. If the employer does not grant time off, the question of availability must be investigated.

6. If an employee was sick and consequently did not work all the hours offered by the shared work employer in a given week, the employee will not be denied shared work benefits for that week.
7. The bureau may not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of the unemployment compensation law which relates to availability for work, active search for work, or refusal to apply for or accept work with an employer other than the individual's shared work employer.
8. An individual who has received all the shared work benefits and regular employment compensation benefits available in a benefit year is an exhaustee under subsection 3 of section 52-07.1-03 and is entitled to receive extended benefits under such statutes if the individual is otherwise eligible under such statutes.
9. A shared work benefit payment may not be made under any shared work plan or this section for any week commencing before July 7, 2002.
10. The bureau shall pay an individual who is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's hours as set forth in the employer's approved shared work plan. If the shared benefit amount is not a multiple of one dollar, the bureau shall reduce the amount to the next highest multiple of one dollar. All shared work benefits under this section are payable from the fund.
11. In any week an individual performs services for a work-sharing employer and an employer other than the work-sharing employer, the weekly work-sharing benefit is reduced by the amount of remuneration received from the non-work-sharing employer in accordance with the weekly benefit amount wage reduction provision in section 52-06-06.
12. The provisions of section 52-06-06.1 which require the bureau to deduct and withhold certain amounts payable to an individual who is liable for child support obligations apply to this subsection.
13. An applicant is not eligible for shared work benefits for any week that employment is performed for the shared work employer in excess of the reduced hours set forth in the approved shared work plan.
14. Notwithstanding any other provision of this chapter relating to charges, the employer must be charged and billed for all shared work benefits paid in accordance with sections 52-04-18, 52-04-19, and 52-04-19.1 as if the employer had elected to make payment in lieu of contributions.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 2003, and after that date is ineffective.

Approved April 19, 2001

Filed April 19, 2001

CHAPTER 458

HOUSE BILL NO. 1135 (Representative Weisz) (Senator Klein)

COUNTY HEALTH CARE INSURANCE LEVY LIMITATIONS

AN ACT to amend and reenact section 52-09-08, subsection 36 of section 57-15-06.7, and subsection 6 of section 57-15-28.1 of the North Dakota Century Code, relating to limitations on the levy by counties for comprehensive health care insurance programs; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 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.

²⁰⁶ **SECTION 2. AMENDMENT.** Subsection 36 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

36. A county levying a tax for old-age and survivors' insurance or comprehensive health care insurance employee benefit programs according to section 52-09-08, for social security, for an employee

²⁰⁶ Section 57-15-06.7 was also amended by section 15 of House Bill No. 1202, chapter 246, and section 1 of House Bill No. 1405, chapter 511.

retirement program established by the governing body, for county automation and telecommunications under section 57-15-62, or for any combination of those purposes, may levy a tax not exceeding thirty mills. The portion of the levy under this subsection for county automation and telecommunications under section 57-15-62 may not exceed five mills. The portion of the levy under this subsection for comprehensive health care insurance employee benefit programs under section 52-09-08 may not exceed four mills.

²⁰⁷ **SECTION 3. AMENDMENT.** Subsection 6 of section 57-15-28.1 of the North Dakota Century Code is amended and reenacted as follows:

6. A county levying a tax for comprehensive health care insurance employee benefit programs in accordance with section 52-09-08 may levy a tax not exceeding four mills and the limitation in subsection 36 of section 57-15-06.7.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 14, 2001

Filed March 15, 2001

²⁰⁷ Section 57-15-28.1 was also amended by section 10 of House Bill No. 1031, chapter 510.

CHAPTER 459

SENATE BILL NO. 2072

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

OASIS BENEFITS

AN ACT to amend and reenact subsection 9 of section 52-09-20 of the North Dakota Century Code, relating to primary insurance benefits under the old-age and survivor insurance system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 52-09-20 of the North Dakota Century Code is amended and reenacted as follows:

9. "Primary insurance benefit" means the sum of the following:
 - a. (1) Fifty percent of the amount of an individual's average monthly wage if the average monthly wage does not exceed seventy-five dollars; or
 - (2) If the average monthly wage exceeds seventy-five dollars, thirty-seven dollars and fifty cents, plus fifteen percent of the amount by which the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars;
 - b. One percent of the amount computed under subdivision a, multiplied by the number of years in which two hundred dollars or more of wages were paid to the individual; and
 - c. (1) Effective August 1, ~~1999~~ 2001, ~~seven~~ eight hundred ~~thirty-three~~ twenty-six dollars and ~~thirty-two~~ sixty-four cents; or
 - (2) Effective August 1, ~~2000~~ 2002, ~~seven~~ eight hundred ~~ninety-nine~~ fifty-three dollars and ~~ninety-eight~~ thirty cents.

Approved March 14, 2001
Filed March 14, 2001

SPORTS AND AMUSEMENTS

CHAPTER 460

HOUSE BILL NO. 1089

(Judiciary Committee)

(At the request of the State Gaming Commission)

COMPULSIVE GAMBLING SERVICES AND GAMES OF CHANCE

AN ACT to create and enact a new subsection to section 12.1-30-03 and a new section to chapter 50-06 of the North Dakota Century Code, relating to businesses allowed to operate on Sunday and compulsive gambling services; to amend and reenact section 53-06.1-01, subsections 3 and 4 of section 53-06.1-01.1, subsections 1 and 4 of section 53-06.1-03, subsections 1, 3, and 5 of section 53-06.1-06, sections 53-06.1-07.2, 53-06.1-07.4, and 53-06.1-10, subsection 2 of section 53-06.1-11.1, subsections 1 and 2 of section 53-06.1-14, subsections 3 and 8 of section 53-06.1-15.1, and subsection 2 of section 53-06.1-16 of the North Dakota Century Code, relating to games of chance; to repeal section 53-06.1-18 of the North Dakota Century Code, relating to compulsive gambling services; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-30-03 of the North Dakota Century Code is created and enacted as follows:

Bingo halls and onsite food concessions between the hours of twelve midnight and one a.m. and within the hours permitted under section 12.1-30-01.

²⁰⁸ **SECTION 2.** A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Compulsive gambling prevention, awareness, crisis intervention, rehabilitation, and treatment services. The department of human services shall contract with qualified treatment service providers for the development and implementation of a program for gambling prevention, awareness, crisis intervention, rehabilitation, financial counseling, and mental health treatment services. The program may provide outpatient services, partial care services, aftercare services, intervention services, financial counseling services, consultation services, or other forms of preventive, rehabilitative, or treatment services for compulsive gamblers. An individual who provides treatment services must meet the minimum standards for certification as a gambling counselor as established by the national council on

²⁰⁸ Section 50-06-21 was amended by section 1 of Senate Bill No. 2308, chapter 421.

problem gambling and be a mental health professional as defined in section 25-03.1-02. An individual who provides financial counseling services must be a certified consumer credit counselor with an accredited financial counseling agency. The department of human services may establish a sliding payment scale for services under the program. The department of human services may establish a centrally located repository of educational materials on identifying and treating compulsive gambling. Any service fee collected by qualified treatment service providers for services provided under the contract must be applied toward the program's compulsive gambling services. The term "qualified treatment service provider" means an entity based in North Dakota which is experienced in and capable of delivering compulsive gambling education, prevention, awareness, crisis intervention, rehabilitation, financial counseling, and mental health treatment services as defined by the department of human services. The term "compulsive gambler" means an individual who is chronically and progressively preoccupied with gambling and the urge to gamble and with gambling behavior that compromises, disrupts, or damages personal, family, or vocational pursuits.

SECTION 3. 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. ~~"Compulsive gambler" means an individual who is chronically and progressively preoccupied with gambling and the urge to gamble and with gambling behavior that compromises, disrupts, or damages personal, family, or vocational pursuits.~~
6. "Distributor" means a person that sells, markets, or distributes equipment usable in the conduct of games.
7. 6. "Educational organization" means a nonprofit public or private elementary or secondary school, two-year or four-year college, or university.

- ~~8.~~ 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.
- ~~9.~~ 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.
- ~~40.~~ 9. "Games" means games of chance.
- ~~41.~~ 10. "Gross proceeds" means all cash and checks received from conducting games, sales tax on bingo cards, and admissions.
- ~~42.~~ 11. "Licensed organization" means an eligible organization licensed by the attorney general.
- ~~43.~~ 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 ~~by a governing body of a city or county~~.
- ~~44.~~ 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.
- ~~45.~~ 14. "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming tax.
- ~~46.~~ 15. "Person" means any person, partnership, corporation, limited liability company, association, or organization.
- ~~47.~~ 16. "Public safety organization" means an organization whose primary purpose is to provide firefighting, ambulance service, crime prevention, or similar emergency assistance.
- ~~48.~~ 17. "Public-spirited organization" means an organization whose primary purpose is for scientific research, amateur sports competition, safety, literary, arts, ~~agriculture~~, 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.

19. "Qualified treatment service provider" means an entity based in North Dakota which is experienced in and capable of delivering compulsive gambling education, prevention, awareness, crisis intervention, rehabilitation, and financial counseling and mental health treatment services as defined by the department of human services.
20. 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.
24. 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 4. AMENDMENT. Subsections 3 and 4 of section 53-06.1-01.1 of the North Dakota Century Code are amended and reenacted as follows:

3. Commission members are entitled to ~~forty~~ sixty-two 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 for the manufacture of pull tabs, paper bingo cards, and pull tab and bingo card dispensing devices; to ensure that net proceeds are ~~disbursed to~~ 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.

²⁰⁹ **SECTION 5. AMENDMENT.** Subsections 1 and 4 of section 53-06.1-03 of the North Dakota Century Code are amended and reenacted as follows:

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:

²⁰⁹ Section 53-06.1-03 was also amended by section 1 of House Bill No. 1300, chapter 461.

- 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. The organization or closely related organizations as a whole may only award a primary prize that does not exceed one thousand dollars and total prizes of all games that do not exceed six thousand dollars per year. The determination of what is a "public-spirited organization" is within the sole discretion of the governing body ~~which should in its determination consider the definition of a public-spirited organization under subsection 18 of section 53-06.1-04 and eligible uses of net proceeds under subsection 2 of section 53-06.1-11.1.~~ A governing body may issue a local permit for games to be held at designated times and places.
 - 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 gaming proceeds for any purpose that does not violate this chapter or gaming rules.
4. A local permit or site authorization and license ~~and rules relating to the conduct and play of games~~ must be displayed at a site.

SECTION 6. AMENDMENT. Subsections 1, 3, 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.
3. An organization shall maintain complete, accurate, and legible bank and accounting records in North Dakota for all gaming activity and establish an adequate system of internal control. The governing board of an eligible organization is primarily responsible and may be held accountable for the proper determination and ~~distribution~~ use of net proceeds. If an organization does not renew its license or its license is denied, relinquished, or revoked and it has not disbursed all of its net proceeds, the organization shall file an action plan as prescribed by the gaming rules with the attorney general.
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, ~~may not be an investor in or board member or consultant to a licensed distributor, or be employed by a licensed distributor to sell or distribute gaming equipment,~~ and may not be employed by a licensed organization to conduct games ~~on a site,~~ 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, ~~may not or be employed by a licensed distributor to sell or distribute gaming equipment,~~ and may not be employed by a licensed organization to conduct games ~~on a site,~~ 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. 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. The 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 7. 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 assess charge each player a fee not to exceed two dollars per one-half hour of playing time, collected in advance. A fee may be charged~~ For a tournament, an organization shall charge each player for an entry into a tournament for prizes and this fee may be in place of or in addition to the fee assessable at one-half hour intervals and the amount of prizes may not exceed ninety percent of the gross proceeds.

SECTION 8. AMENDMENT. Section 53-06.1-07.4 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.4. Paddlewheels. A paddlewheel is a mechanical vertical wheel marked off into equally spaced sections that contain numbers or symbols, and which after being spun, uses a pointer to indicate the winning number or symbol. The maximum price per paddlewheel ticket or chip is two dollars. ~~No money may be used as a wager.~~ A table and chips must be used to register a player's wager when a prize is a variable multiple of the wager. Otherwise, a ~~paddlewheel~~ ticket must be used. A player may not place wagers ~~valued at~~ totaling more than twenty dollars on each spin of the paddlewheel. Cash, chips, or merchandise prizes may be awarded. No single cash prize, value of chips, or the retail value of the merchandise prize to be awarded for a winning ~~wager~~ ticket or chip may exceed one hundred dollars.

²¹⁰ **SECTION 9. AMENDMENT.** Section 53-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10. Twenty-one. ~~No money may be used as a wager.~~ The organization shall provide playing chips of various denominations to players. The maximum limit per wager may be set by the organization at not more than five dollars and original wagers in increments of one dollar must be accepted up to the maximum limit. A player may not play more than two hands at the same time. Only the player actually playing a hand may place a wager on any hand. 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 10. AMENDMENT. Subsection 2 of section 53-06.1-11.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A licensed organization shall disburse net proceeds within the period prescribed by rule and for only these educational, charitable, patriotic, fraternal, religious, or public-spirited uses:

²¹⁰ Section 53-06.1-10 was also amended by section 1 of House Bill No. 1306, chapter 462.

- 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 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 provided that the gross revenue from the activity is disbursed to uses prescribed by this subsection.

²¹¹ **SECTION 11. AMENDMENT.** Subsections 1 and 2 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 ~~and a distributor~~ shall apply annually for a license ~~upon a form prescribed by the attorney general before the first day of April in each year~~ and pay a license fee of four thousand dollars. ~~The license fee for a distributor is shall apply annually for a license and pay a license fee of one thousand five hundred dollars. The license fee for a manufacturer is four thousand dollars.~~ Application must be made 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

²¹¹ Section 53-06.1-14 was also amended by section 1 of Senate Bill No. 2407, chapter 465.

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 may be sold at an excessive price.

SECTION 12. AMENDMENT. Subsections 3 and 8 of section 53-06.1-15.1 of the North Dakota Century Code are amended and reenacted as follows:

3. Seize and remove from a site or premises and impound any gaming equipment, supplies, games, or books and records for the purpose of examination and inspection. ~~When books or records are seized, the attorney general shall provide copies of these records or books within seventy-two hours of a specific request by the organization for a copy of the books or records seized.~~
8. Require a ~~licensed~~ or authorize an organization to pay a bingo or raffle prize to a player on a dispute or based on a factual determination or a hearing by the attorney general.

SECTION 13. AMENDMENT. Subsection 2 of section 53-06.1-16 of the North Dakota Century Code is amended and reenacted as follows:

2. It is unlawful for a person ~~playing or conducting a game, or otherwise:~~
 - a. To use bogus or counterfeit chips or pull tabs or to substitute or use any game, cards, pull tabs, or game piece that have been marked or tampered with.
 - b. To employ or have on one's person any cheating device to facilitate cheating in any game, or to attempt to commit or commit a theft, or to assist in committing any other fraudulent scheme.
 - c. To willfully use any fraudulent scheme or technique, including when a person directly or indirectly solicits, provides, or receives inside information of the status of a game of pull tabs for the benefit of any person.
 - d. To alter or counterfeit a site authorization, license, or North Dakota gaming stamp.
 - e. To knowingly cause, aid, abet, or conspire with another person or to cause any person to violate this chapter or a gaming rule.

A person violating this subsection is guilty of a class A misdemeanor unless the total amount gained through the use of these items, schemes, or techniques resulted in a person obtaining over five hundred dollars, then the offense is a class C felony. However, if a person knowingly uses a fraudulent scheme regarding soliciting, providing, using, or receiving inside information involving the game of pull tabs or uses a fraudulent scheme or technique to cheat or skim involving pull tabs, twenty-one, paddlewheels, or bingo, regardless of the amount gained, the offense is a class C felony.

SECTION 14. REPEAL. Section 53-06.1-18 of the North Dakota Century Code is repealed.

SECTION 15. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 461

HOUSE BILL NO. 1300

(Representative Wald)

PUBLIC-SPIRITED ORGANIZATION CHARITY EVENTS

AN ACT to amend and reenact subdivision a of subsection 1 of section 53-06.1-03 of the North Dakota Century Code, relating to charity events by public-spirited organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹² **SECTION 1. AMENDMENT.** Subdivision a of subsection 1 of section 53-06.1-03 of the North Dakota Century Code is amended and reenacted 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 thousand dollars and total prizes of all games that do not exceed six thousand dollars per year. The determination of what is a "public-spirited organization" is within the sole discretion of the governing body which should in its determination consider the definition of a public-spirited organization under subsection 18 of section 53-06.1-01 and eligible uses of net proceeds under subsection 2 of section 53-06.1-11.1. 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

²¹² Section 53-06.1-03 was also amended by section 5 of House Bill No. 1089, chapter 460.

- (5) Shall file a report as prescribed by the attorney general with the governing body and attorney general.

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 462

HOUSE BILL NO. 1306

(Representatives Renner, Hawken)
(Senators Nichols, Traynor)

GAMES OF CHANCE WAGERS AND RENT

AN ACT to amend and reenact section 53-06.1-10 and subsection 5 of section 53-06.1-11 of the North Dakota Century Code, relating to the limit on wagers in the game twenty-one and rent limits under the games of chance laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹³ **SECTION 1. AMENDMENT.** Section 53-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10. Twenty-one. No money may be used as a wager. The organization shall provide playing chips of various denominations to players. The maximum limit per wager may be set by the organization at not more than five twenty-five dollars and wagers in increments of one dollar must be accepted up to the maximum limit. A player may not play more than two hands at the same time. Only the player actually playing a hand may place a wager on any hand. 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.

²¹⁴ **SECTION 2. AMENDMENT.** Subsection 5 of section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

5. For a site where bingo is not the primary game:
 - a. If twenty-one or paddlewheels is conducted, the monthly rent may not exceed two hundred dollars multiplied by the necessary number of tables based on criteria prescribed by gaming rule. For each twenty-one table with a wager greater than five dollars, an additional amount up to one hundred dollars may be added to the monthly rent. If pull tabs is also conducted involving a jar bar or dispensing device, but not both, the monthly rent for pull tabs may not exceed an additional one hundred seventy-five dollars. If pull tabs is conducted involving both a jar bar and dispensing device, the monthly rent for pull tabs may not exceed an additional two hundred dollars.

²¹³ Section 53-06.1-10 was also amended by section 9 of House Bill No. 1089, chapter 460.

²¹⁴ Section 53-06.1-11 was also amended by section 1 of House Bill No. 1416, chapter 463.

- b. If twenty-one and paddlewheels are not conducted but pull tabs is conducted involving a jar bar or dispensing device, but not both, the monthly rent may not exceed two hundred seventy-five dollars. If pull tabs is conducted involving both a jar bar and dispensing device, the monthly rent for pull tabs may not exceed three hundred dollars.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 463

HOUSE BILL NO. 1416

(Representatives Mahoney, Carlson, Delmore, Wald)
(Senators Cook, D. Mathern)

GAMES OF CHANCE ALLOWABLE EXPENSES

AN ACT to amend and reenact subsection 2 of section 53-06.1-11 of the North Dakota Century Code, relating to allowable expenses for games of chance; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁵ **SECTION 1. AMENDMENT.** Subsection 2 of section 53-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. Allowable expenses may be deducted from adjusted gross proceeds. The allowable expense limit is ~~fifty~~ fifty-one percent of the first two hundred thousand dollars of adjusted gross proceeds per quarter and forty-five percent of the adjusted gross proceeds in excess of two hundred thousand dollars per quarter. In addition, an organization may deduct as an allowable expense:
 - a. Two and one-half percent of the gross proceeds of pull tabs.
 - b. Capital expenditures for security or video surveillance equipment used for controlling games if the equipment is required by section 53-06.1-10 or authorized by rule, and it is approved by the attorney general.
 - c. If an organization's total actual expenses exceed the allowable expenses provided by this subsection, the organization may also deduct the expenses up to two additional percent of the first two hundred thousand dollars of adjusted gross proceeds per quarter.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 2001.

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

Approved April 19, 2001
Filed April 19, 2001

²¹⁵ Section 53-06.1-11 was also amended by section 2 of House Bill No. 1306, chapter 462.

CHAPTER 464

SENATE BILL NO. 2234

(Senators Kroeplin, Kelsh, Klein)
(Representatives Brusegaard, Schmidt)

PULL TAB EXCISE TAX

AN ACT to amend and reenact section 53-06.1-12 of the North Dakota Century Code, relating to the excise tax for pull tabs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁶ **SECTION 1. AMENDMENT.** Section 53-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-12. Gaming and excise taxes - Exception - Deposits.

1. A gaming tax is imposed on the total adjusted gross proceeds earned by a licensed organization in a quarter and it must be computed and paid to the attorney general on a quarterly basis on the tax return. This tax must be paid from adjusted gross proceeds and is not part of the allowable expenses. The tax rates are:
 - a. On adjusted gross proceeds not exceeding two hundred thousand dollars, a tax of five percent.
 - b. On adjusted gross proceeds exceeding two hundred thousand dollars but not exceeding four hundred thousand dollars, a tax of ten percent.
 - c. On adjusted gross proceeds exceeding four hundred thousand dollars but not exceeding six hundred thousand dollars, a tax of fifteen percent.
 - d. On adjusted gross proceeds exceeding six hundred thousand dollars, a tax of twenty percent.
2. ~~It~~ Except as provided in subsection 3, in addition to any other tax provided by law and in place of sales or use taxes, there is imposed an excise tax of four and one-half percent on the gross proceeds from the sale at retail of pull tabs to ~~a final user~~ users. This includes pull tabs provided to a player in exchange for redeemed winning pull tabs. The tax must be paid to the attorney general when tax returns are filed.
3. For organizations whose gross proceeds 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.

²¹⁶ Section 53-06.1-12 was also amended by section 15 of House Bill No. 1003, chapter 3.

4. The state treasurer shall deposit gaming and excise taxes, monetary fines, and interest and penalties collected in the general fund in the state treasury.

Approved March 28, 2001

Filed March 28, 2001

CHAPTER 465

SENATE BILL NO. 2407

(Senators Tomac, Holmberg, Stenehjem)
(Representatives DeKrey, Kretschmar, Renner)

GAMING EQUIPMENT MANUFACTURERS AND DISTRIBUTORS

AN ACT to create and enact a new subsection to section 53-06.1-14 of the North Dakota Century Code, relating to manufacturers and distributors of gaming equipment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁷ **SECTION 1.** A new subsection to section 53-06.1-14 of the North Dakota Century Code is created and enacted as follows:

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 minimum order quantity and freight terms.

Approved April 10, 2001
Filed April 10, 2001

²¹⁷ Section 53-06.1-14 was also amended by section 11 of House Bill No. 1089, chapter 460.

CHAPTER 466

SENATE BILL NO. 2381

(Senators Klein, Thane)
(Representatives Berg, Mahoney, Schmidt)

SIMULCAST WAGERING

AN ACT to amend and reenact section 53-06.2-10.1 of the North Dakota Century Code, relating to simulcast wagering.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.2-10.1 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-10.1. Simulcast wagering. In addition to racing under the certificate system, as authorized by this chapter, and conducted upon the premises of a racetrack, simulcast parimutuel wagering may be conducted in accordance with this chapter and interim standards that need not comply with chapter 28-32, or rules adopted by the commission under this chapter. Any organization qualified under section 53-06.2-06 to conduct racing may make written application to the commission for the conduct of simulcast parimutuel wagering on races held at licensed racetracks inside the state or racetracks outside the state, or both. Notwithstanding any other provision of this chapter, the commission may authorize any licensee to participate in interstate or international combined wagering pools with one or more other racing jurisdictions. Any time that a licensee participates in an interstate or international combined pool, the licensee, as prescribed by the commission, may adopt the take-out of the host jurisdiction or facility. The commission may permit a licensee to use one or more of its races or simulcast programs for an interstate or international combined wagering pool at locations outside its jurisdiction and may allow parimutuel pools in other states to be combined with parimutuel pools in its jurisdiction for the purpose of establishing an interstate or international combined wagering pool. The participation by a licensee in a combined interstate or international wagering pool does not cause that licensee to be considered to be doing business in any jurisdiction other than the jurisdiction in which the licensee is physically located. Parimutuel taxes or commissions may not be imposed on any amounts wagered in an interstate or international combined wagering pool other than amounts wagered within this jurisdiction. The certificate system also permits parimutuel wagering to be conducted through account wagering. As used in this section, "account wagering" means a form of parimutuel wagering in which an individual deposits money in an account and uses the account balance to pay for parimutuel wagers. An account wager made on an account established in this state may only be made through the licensed simulcast service provider authorized by the commission to operate the simulcast parimutuel wagering system under the certificate system. An account wager may be made in person, by direct telephone communication, or through other electronic communication in accordance with rules adopted by the commission. Breakage for interstate or international combined wagering pools must be calculated in accordance with the statutes or rules of the host jurisdiction and must be distributed among the participating jurisdictions in a manner agreed to among the jurisdictions.

Approved March 29, 2001
Filed March 29, 2001

STATE GOVERNMENT

CHAPTER 467

SENATE BILL NO. 2048

(Legislative Council)

(Legislative Management Committee)

LEGISLATIVE ASSEMBLY MEMBER COMPENSATION

AN ACT to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to compensation of members of the legislative assembly; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁸ **SECTION 1. AMENDMENT.** Section 54-03-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of one hundred eleven dollars for each calendar day during any organizational, special, or regular legislative session and for each day that member attends a meeting of a legislative committee between the organizational session and the regular session as authorized by legislative rule. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of six hundred fifty dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees with the additional limitation that reimbursement for travel by common carrier may be only at the cost of coach fare and may not exceed one and one-half times the amount the member would be entitled to receive as mileage reimbursement for travel by motor vehicle. A member of the legislative assembly who does not receive reimbursement for lodging and whose place of residence in the legislative district that the member represents is not within the city of Bismarck is entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between the residence and the place of meeting of the legislative assembly when it is in session and may receive reimbursement for lodging at the place of meeting of the legislative assembly as provided in section 44-08-04 for each calendar day for which round trip travel reimbursement is not claimed, provided that the total reimbursement may not exceed six hundred fifty dollars per month. The

²¹⁸ Section 54-03-20 was also amended by section 3 of Senate Bill No. 2001, chapter 26, and section 1 of Senate Bill No. 2175, chapter 468.

amount to which each legislator is entitled must be paid following the organizational session in December and following each month during a regular or special session.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session or a legislative committee meeting must be included as a calendar day during a legislative session or as a day of a legislative committee meeting for the purposes of this section.

In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of two hundred fifty dollars a month, which is payable every six months or monthly, at the member's option. If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member. The majority and minority leaders of the house and senate are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred fifty dollars per month during the biennium for their execution of public duties.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances must be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)].

SECTION 2. RETROACTIVE APPLICATION. Section 1 of this Act is retroactive in application to December 7, 2000.

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

Approved January 30, 2001
Filed January 30, 2001

CHAPTER 468

SENATE BILL NO. 2175

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

LEGISLATIVE ASSEMBLY MEMBER SESSION COMPENSATION

AN ACT to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to compensation paid to members of the legislative assembly during any organizational, special, or regular legislative session; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁹ **SECTION 1. AMENDMENT.** Section 54-03-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of one hundred ~~eleven~~ twenty-five dollars for each calendar day during any organizational, special, or regular legislative session. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of six hundred fifty dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees with the additional limitation that reimbursement for travel by common carrier may be only at the cost of coach fare and may not exceed one and one-half times the amount the member would be entitled to receive as mileage reimbursement for travel by motor vehicle. A member of the legislative assembly who does not receive reimbursement for lodging and whose place of residence in the legislative district that the member represents is not within the city of Bismarck is entitled to reimbursement at the rate provided for state employees for necessary travel for not to exceed one round trip taken per day between the residence and the place of meeting of the legislative assembly when it is in session and may receive reimbursement for lodging at the place of meeting of the legislative assembly as provided in section 44-08-04 for each calendar day for which round trip travel reimbursement is not claimed, provided that the total reimbursement may not exceed six hundred fifty dollars per month. The amount to which each legislator is entitled must be paid following the organizational session in December and following each month during a regular or special session.

²¹⁹ Section 54-03-20 was also amended by section 3 of Senate Bill No. 2001, chapter 26, and section 1 of Senate Bill No. 2048, chapter 467.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session must be included as a calendar day during a legislative session for the purposes of this section.

In addition, each member is entitled to receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of two hundred fifty dollars a month, which is payable every six months or monthly, at the member's option. If a member dies or resigns from office during the member's term, the member may be paid only the allowances provided for in this section for the period for which the member was actually a member. The majority and minority leaders of the house and senate are each entitled to receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of two hundred fifty dollars per month during the biennium for their execution of public duties.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances must be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)].

SECTION 2. RETROACTIVE APPLICATION. This Act is retroactive in application to January 1, 2001.

Approved March 28, 2001
Filed March 28, 2001

CHAPTER 469

HOUSE BILL NO. 1205 (Representatives Klemin, Mahoney) (Senator Trenbeath)

LEGISLATIVE ASSEMBLY MEMBER PROCEEDING CONTINUANCE

AN ACT to amend and reenact section 54-03-22 of the North Dakota Century Code, relating to the continuance of civil proceedings when a party, witness, or attorney is a member of the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03-22 of the North Dakota Century Code is amended and reenacted as follows:

54-03-22. When party or attorney is member of legislative assembly. ~~In any civil action pending in any court in this state at any time when the legislative assembly is in session, it is sufficient cause for a continuance of such action to a succeeding term of court, if it is made to appear by affidavit of any attorney of record that the party to said action applying for such continuance, or any attorney who has been the attorney of record of such party since commencement of such action or for more than fifteen days prior to filing such affidavit, is a~~ A member of the legislative assembly who is a witness or party to a civil action or has been the attorney of record for a party in a civil action for more than fifteen days is entitled to a continuance or an extension of time for any matter related to the civil action during the time the member of either house of the legislative assembly and is then, or, at the beginning of the term of the court in which such action is pending, will be, actually engaged in the performance of his the member's duties at a session of the legislative assembly, and that the attendance of such party or the attorney of record the member of the legislative assembly is necessary to the fair and proper trial of said in the action. Upon application for the continuance or extension, the proceeding must be continued and may not proceed within ten days after the adjournment of the legislative assembly over the objection of the party, witness, or attorney of record. ~~Notice of motion, together with a copy of the an affidavit stating that the party, witness, or the attorney of record is a member of the legislative assembly, must be served upon the every other party to the action at least ten days prior to before the opening of the term of court at which said action is pending, if said action is pending in such court at the opening of the term. Upon the proof of service of such notice and affidavit, the case must be continued over to the next succeeding term and may not be tried over the objection of the party within ten days after the adjournment of the legislative assembly date of the matter sought to be continued.~~ It is sufficient cause for the continuance of any proceeding before any board, commission, or agency of the state or its political subdivisions that any witness, party to the proceeding, or his a party's attorney, is a member of the legislative assembly and the legislative assembly is in session. The witness, party, or his the party's attorney shall give written notice of the fact of his membership in the legislative assembly along with a request for continuance of the proceeding to the board, commission, or agency before which he the member of the legislative assembly was to appear, and upon. Upon receipt thereof of the notices, the board shall cause continue the proceeding to be continued to a date not less than ten days after adjournment of the legislative

assembly, and shall notify the other parties to the proceeding, and their attorneys, of ~~such~~ the continuance.

Approved March 20, 2001
Filed March 20, 2001

CHAPTER 470

HOUSE BILL NO. 1474

(Representatives Metcalf, Boucher, Haas, Klemin)
(Senators Kilzer, Wardner)

LEGISLATIVE ASSEMBLY MEMBER LEAVE OF ABSENCE

AN ACT to amend and reenact section 54-03-27 of the North Dakota Century Code, relating to a leave of absence from employment for service in the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03-27 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-03-27. Service in the legislative assembly - Leave of absence from ~~public~~ employment. The executive officer in charge of a state agency, department, or institution or the governing body of any political subdivision or any other employer in this state may grant a leave of absence from employment to a full-time employee of that governmental entity or of that employer who is a member of the legislative assembly for service during any regular or special session of the legislative assembly and for attendance at a meeting of the legislative council or any of its committees. The leave of absence may be without pay, and the employer may reduce or eliminate the payment of any additional benefits normally due the employee while the employee is performing legislative service. ~~A state agency, department, or institution or a political subdivision~~ If the leave of absence is granted, the employer may not terminate the employment of an employee solely due to the fact that the employee is absent from employment as the result of service in the legislative assembly.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 471

HOUSE BILL NO. 1407

(Representatives Berg, Keiser, Price)
(Senators Espegard, Krebsbach, Lee)

MANDATED HEALTH INSURANCE COST-BENEFIT ANALYSIS

AN ACT to provide for a cost-benefit analysis of mandated health insurance coverage of services; to provide for a legislative council study; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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.
2. 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. 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. 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.

SECTION 2. LEGISLATIVE COUNCIL STUDY - REPORT BY INSURANCE COMMISSIONER ON HEALTH INSURANCE MANDATED COVERAGE OF SERVICES. The legislative council shall consider studying during the 2001-02 interim existing mandated health insurance coverage of services and the feasibility and desirability of repealing state laws mandating health insurance coverage of services. During the 2001-02 interim, the insurance commissioner shall evaluate, subject to receipt of adequate funding under section 3 of this Act, each existing health insurance coverage mandate on the basis of cost or effect on insurance premiums as these relate to the benefits and evaluate the benefits of reducing the need for future health care services due to early identification and treatment. The insurance commissioner may contract with a third party to perform the evaluations. The insurance commissioner shall present the report to the legislative council before July 1, 2002.

SECTION 3. FUNDING AUTHORITY - APPROPRIATION. The insurance commissioner may accept, receive, and expend public and private moneys, not in excess of \$250,000, made available by grant or donation to accomplish the evaluations required under section 2 of this Act and those moneys are appropriated to the insurance commissioner for these purposes for the biennium beginning July 1, 2001, and ending June 30, 2003. Any unexpended appropriation authority to and any excess income received by the insurance commissioner under chapter 32 of the 1999 Session Laws, in an amount not to exceed \$250,000, are not subject to section 54-44.1-11 and are available and may be expended by the insurance commissioner to accomplish the evaluations required under section 2 of this Act during the biennium beginning July 1, 2001, and ending June 30, 2003. The unexpended appropriation authority may only be spent to the extent that the expenditure does not reduce the projected transfers to the general fund under section 26.1-01-07.1 as projected by the fifty-seventh legislative assembly revenue forecast for the 2001-03 biennium.

SECTION 4. APPROPRIATION. There is appropriated out of any moneys in the insurance regulatory trust fund in the state treasury, not otherwise appropriated, the sum of \$55,000, or so much of the sum as may be necessary, to the insurance commissioner for the purpose of paying for the services contracted for under section 1 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 26, 2001
Filed April 26, 2001

CHAPTER 472

HOUSE BILL NO. 1197

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

STATE EMPLOYEE EXPENSE REIMBURSEMENT

AN ACT to amend and reenact section 54-06-09 of the North Dakota Century Code, relating to mileage and travel expense reimbursement for state officials and employees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁰ **SECTION 1. AMENDMENT.** Section 54-06-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-06-09. Mileage and travel expense of state officers and employees.

1. State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, must be allowed and paid for mileage and travel expense the following amounts:
 - a. The sum of ~~twenty-five~~ thirty-one cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when the travel is by motor vehicle or ~~twenty-seven~~ seventy cents per mile [1.61 kilometers] if the travel is by truck, the use of which is required by the employing entity. The sum of ~~thirty-five~~ seventy cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when the travel is by private airplane. Mileage by private aircraft must be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage must be based on the road mileage between the geographical points. Reimbursement for private airplane travel must be calculated as follows:
 - (1) If reimbursement is for one properly authorized and reimbursable passenger, reimbursement must be paid on a per-mile basis as provided in this subsection.
 - (2) If reimbursement is claimed for a chartered private aircraft, reimbursement may not exceed the cost of regular coach fare on a commercial flight, if one is scheduled between the point of departure, point of destination, and return, for each properly authorized and reimbursable passenger on the

²²⁰ Section 54-06-09 was also amended by section 2 of House Bill No. 1147, chapter 473.

charter flight; or, where there is no such regularly scheduled commercial flight, the actual cost of the charter.

- b. Except as provided in subdivision a, when travel is by rail or certificated air taxi commercial operator or other common carrier, including regularly scheduled flights by airlines, the amount actually and necessarily expended therefor in the performance of official duties.
2. No reimbursement may be paid for leased private aircraft, except for leased or rented private aircraft from a recognized fixed base aviation operator who is in the business of leasing and renting private aircraft and is located on an airport open for public use.
3. If only one person engages in such travel in a motor vehicle exceeding at any geographical point ~~one three hundred fifty~~ three hundred fifty miles [~~241.40~~ 482.80 kilometers] beyond the borders of this state, reimbursement is limited to eighteen cents per mile [1.61 kilometers] for ~~the out-of-state portion of the travel beyond the first one hundred fifty miles [241.40 kilometers]~~ driven in excess of six hundred miles [965.60 kilometers] of round trip out-of-state travel.
4. An official, deputy, assistant, clerk, or other employee, when required to travel by motor vehicle or truck in the performance of official duty, shall use a state-owned vehicle whenever possible unless exempted under section 24-02-03.3. When official travel is by motor vehicle or airplane owned by the state or by any department or political subdivision of the state, no allowance may be made or paid for such mileage, except that governmental entities may share expenses when officials or employees of those entities travel in the same motor vehicle or aircraft.
5. Notwithstanding the other provisions of this section, state employees permanently located outside the state or on assignments outside the state for an indefinite period of time, exceeding at least thirty consecutive days, must be allowed and paid ~~twenty-five~~ thirty-one cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle, and the ~~one hundred fifty-mile [241.40 kilometer]~~ three-hundred-mile [482.80-kilometer] restriction imposed by subsection 3 does not apply.
6. Before any allowance for any such mileage or travel expenses may be made, the official, deputy, assistant, clerk, or other employee shall file with the employee's department, institution, board, commission, or agency an itemized statement showing the mileage traveled, the hour of departure and return, the days when and how traveled, the purpose thereof, and such other information and documentation as may be prescribed by rule of the employee's department, institution, board, commission, or agency. The statement must be submitted to the employee's department, institution, board, commission, or agency for approval and must be paid only when approved by the employee's department, institution, board, commission, or agency.

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

Approved April 18, 2001

Filed April 18, 2001

CHAPTER 473

HOUSE BILL NO. 1147

(Transportation Committee)

(At the request of the Office of Management and Budget)

STATE EMPLOYEE PERSONAL VEHICLE USE

AN ACT to amend and reenact subsection 1 of section 24-02-03.3 and subsection 4 of section 54-06-09 of the North Dakota Century Code, relating to use of personal motor vehicles by state employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²¹ **SECTION 1. AMENDMENT.** Subsection 1 of section 24-02-03.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The director shall establish within the department a central vehicle management system to regulate the operation, maintenance, and management of all motor vehicles owned or leased by the state subject to registration under chapters 39-04 and 39-05. Upon the request of a state agency and an agreement between the agency and director for the use of the motor vehicle-related equipment, the director may purchase or lease motor vehicle-related equipment and include that equipment within the system. The director shall provide a uniform method of documenting the use and cost of operation of motor vehicles and motor vehicle-related equipment in the system. The director shall advise the director of the office of management and budget as to the need to acquire or dispose of system motor vehicles. The specifications for highway patrol vehicles to be acquired may be set by the highway patrol superintendent. Every state agency, institution, department, board, bureau, and commission unless exempted by the director must use the system. However, an agency, institution, department, board, bureau, or commission may authorize the use of an employee's personal motor vehicle pursuant to subsection 4 of section 54-06-09.

²²² **SECTION 2. AMENDMENT.** Subsection 4 of section 54-06-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. An official, deputy, assistant, clerk, or other employee, when required to travel by motor vehicle or truck in the performance of official duty, shall use a state-owned vehicle whenever possible unless exempted under section 24-02-03.3. However, an agency, institution, department, board, bureau, or commission may allow use of an official's, deputy's, or

²²¹ Section 24-02-03.3 was also amended by section 1 of House Bill No. 1186, chapter 252.

²²² Section 54-06-09 was also amended by section 1 of House Bill No. 1197, chapter 472.

employee's personal motor vehicle in circumstances authorized by the official, deputy, or the employee's supervisor. If personal motor vehicle use is authorized under this subsection, the agency may also allow mileage reimbursement at a rate less than that otherwise provided in this section. When official travel is by motor vehicle or airplane owned by the state or by any department or political subdivision of the state, no allowance may be made or paid for such mileage, except that governmental entities may share expenses when officials or employees of those entities travel in the same motor vehicle or aircraft.

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 474

HOUSE BILL NO. 1035

(Legislative Council)

(Budget Committee on Government Services)

STATE EMPLOYEE TELECOMMUTING INCENTIVE PROGRAM

AN ACT relating to a state employee telecommuting incentive program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Telecommuting incentive program for state employees.

1. A state agency head may submit a proposal to the suggestion incentive committee established under section 54-06-24 to locate a state employee away from a central office setting of the agency. The proposal must be for a position that has been or would be located in a central office setting within the agency. The proposal must contain a comparison of the estimated annual costs of locating the employee away from a central office setting within the agency to the estimated annual costs of locating the employee in a central office setting within the agency. The comparison must include supporting documentation.
2. a. The suggestion incentive committee shall consider the proposal and determine whether:
 - (1) The proposal has been previously submitted and rejected.
 - (2) The proposal is beyond the reasonable expectations of job performance for an employee.
 - (3) The proposal will increase employment opportunities in a part of the state which is more rural than where the central office setting within the agency is located.
 - (4) Implementation of the proposal is desirable and feasible.
 - (5) Implementation of the proposal will continue to provide the quality of services presently provided by the employing state agency and any other state agency affected by the proposal.
- b. The suggestion incentive committee shall inform the state agency head in writing of its decision on the proposal. For a proposal not approved, the committee shall include its reasons for rejecting the proposal.
- c. A state agency head who submits a proposal and also is a member of the suggestion incentive committee shall abstain from voting on that agency head's proposal.

3. A state agency head who submits a proposal that is approved by the suggestion incentive committee and implemented by the state agency shall compare the actual costs directly relating to the telecommuting program for the twelve-month period beginning with the month the proposed change is instituted to the estimated costs if the program would not have been implemented. The state agency head shall submit the cost comparison to the suggestion incentive committee. Upon approval of the cost comparison report by the suggestion incentive committee, the state agency head is entitled to receive ten percent of any savings identified in the report as resulting from implementing the telecommuting program for the twelve-month period up to a maximum of two thousand dollars. A state agency head may receive no more than two thousand dollars under this program regardless of the number of employees that are located away from the central office setting and the total savings that result. The state employee who is located away from a central office setting of the agency is entitled to receive twenty percent of any savings identified in the report up to a maximum of two thousand dollars. The state agency head may use twenty percent of any savings identified in the report for one-time technology, equipment, or capital improvement costs.

SECTION 2. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2005, and after that date is ineffective.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 475

HOUSE BILL NO. 1119

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

STATE EMPLOYEE PERFORMANCE BONUS PROGRAM

AN ACT to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to establishing a state employee performance bonus program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

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 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 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. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2005, and after that date is ineffective.

Approved April 18, 2001
Filed April 18, 2001

CHAPTER 476

HOUSE BILL NO. 1120

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

STATE EMPLOYEE RECRUITMENT AND RETENTION PROGRAM

AN ACT to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to pilot programs for recruiting and retaining state employees in hard-to-fill occupations; 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 54-06 of the North Dakota Century Code is created and enacted as follows:

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 2. EXPIRATION DATE. This Act is effective through June 30, 2003, and after that date is ineffective.

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

Approved March 14, 2001

Filed March 15, 2001

CHAPTER 477**HOUSE BILL NO. 1050**

(Legislative Council)

(Legislative Management Committee)

LEGISLATIVE ASSEMBLY BILL FILING

AN ACT to amend and reenact section 54-07-01.5 of the North Dakota Century Code, relating to the filing of bills enacted by the Legislative Assembly; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-07-01.5 of the North Dakota Century Code is amended and reenacted as follows:

54-07-01.5. Governor to file bills with secretary of state. The governor shall cause each bill passed by the legislative assembly and not vetoed by the governor to be filed with the secretary of state within five legislative days; ~~Sundays excepted~~, after the bill has been ~~presented~~ delivered to the governor ~~unless~~. If the legislative assembly ~~by its adjournment prevents its return in which case is not in session~~, the governor shall cause ~~the~~ each bill delivered to the governor to be filed with the secretary of state within fifteen days, Saturdays and Sundays excepted, after ~~the adjournment~~ delivery of the bill to the governor.

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

Approved February 12, 2001

Filed February 12, 2001

CHAPTER 478

HOUSE BILL NO. 1259

(Representatives Monson, Delzer, Kingsbury, Wald)

OCCUPATIONAL AND PROFESSIONAL BOARD AUDITS

AN ACT to create and enact a new section to chapter 54-10 of the North Dakota Century Code, relating to audits and reviews of occupational and professional boards; and to amend and reenact subsection 2 of section 54-10-01 of the North Dakota Century Code, relating to powers and duties of the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 54-10-01 of the 1999 Supplement to 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; ~~including occupational or professional boards provided for by law.~~ The state auditor shall audit or review each state agency once every two years. The state auditor shall determine the contents of the audits and reviews of state agencies. The state auditor may conduct any work required by the federal government. The state auditor shall charge an amount equal to the 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 nongeneral fund moneys. ~~The governing board of any occupational or professional board shall provide for an audit once every two years by a certified public accountant or licensed public accountant who shall submit the audit report to the state auditor's office. If the report is in the form and style as prescribed by the state auditor, the state auditor may not audit that board. Alternatively, an occupational or professional board may request the state auditor to do its audit, and if the state auditor agrees to do so, the state auditor shall deposit the fees charged to the occupational or professional board into the state auditor operating account.~~ Audits and reviews may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.

SECTION 2. A new section to chapter 54-10 of the North Dakota Century Code is created and enacted as follows:

Occupational and professional boards - Audits and reports. The governing board of any occupational or professional board shall provide for an audit once every two years by a certified public accountant or licensed public accountant. The accountant conducting the audit shall submit the audit report to the state auditor's office. If the report is in the form and style prescribed by the state auditor,

the state auditor may not audit that board. An occupational or professional board may request the state auditor to conduct its audit, and if the state auditor agrees to conduct the audit, the state auditor shall deposit the fees charged to the occupational or professional board into the state auditor operating account. Instead of providing for an audit every two years, an occupational or professional board that has less than ten thousand dollars of annual receipts may submit an annual report to the state auditor. The report must contain the information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the occupational or professional board an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge an occupational or professional board a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 479

SENATE BILL NO. 2259

(Senators Klein, Christmann, Heitkamp)
(Representatives Pollert, Weisz)

PARK DISTRICT AUDITS

AN ACT to amend and reenact section 54-10-14 of the North Dakota Century Code, relating to audits of park districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports. The state auditor shall audit the following political subdivisions once every two years, except as provided in this section or otherwise by law:

1. Counties.
2. Cities.
3. Park districts.
4. School districts.
5. Firefighters relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison diversion conservancy district.
10. Rural fire protection districts.
11. Special education districts.
12. Area vocational and technology centers.
13. Correction centers.
14. Recreation service districts.
15. Weed boards.
16. Irrigation districts.
17. Rural ambulance service districts.

18. Southwest water authority.
19. Regional planning councils.
20. Soil conservation districts.

The state auditor shall charge the political subdivision an amount equal to the fair value of the audit and any other services rendered. The political subdivision audited shall pay to the state treasurer the fees for the audit performed by the state auditor. The state treasurer shall deposit the fees in the state auditor operating account. The state treasurer shall credit the state auditor operating account with the amount of interest earnings attributable to the deposits in that account. Expenses relating to political subdivision audits must be paid from the state auditor operating account, within the limits of legislative appropriation.

In lieu of conducting an audit every two years, the state auditor may require annual reports from school districts with less than one hundred enrolled students, cities with less than three hundred population, park districts with less than two hundred thousand dollars of annual receipts, and other political subdivisions subject to this section, or otherwise provided by law, with less than one hundred thousand dollars of annual receipts. The reports must contain the financial information required by the state auditor. The state auditor also may make any additional examination or audit determined necessary in addition to the annual report. When a report is not filed, the state auditor may charge the political subdivision an amount equal to the fair value of the additional examination or audit and any other services rendered. The state auditor may charge a political subdivision a fee not to exceed fifty dollars an hour for the costs of reviewing the annual report.

A political subdivision, at the option of its governing body, may be audited by a certified public accountant or licensed public accountant rather than by the state auditor. The public accountant shall comply with generally accepted government auditing standards for audits of political subdivisions. The report must be in the form and content required by the state auditor. The number of copies of the audit report requested by the state auditor must be filed with the state auditor when the public accountant delivers the audit report to the political subdivision. The state auditor shall review the audit report to determine if the report is in the required form and has the required content, and if the audit meets generally accepted government auditing standards. The state auditor also may periodically review the public accountant's workpapers to determine if the audit meets generally accepted government auditing standards. If the report is in the required form and has the required content, and the report and workpapers comply with generally accepted government auditing standards, the state auditor shall accept the audit report. The state auditor may charge the political subdivision a fee of up to fifty dollars an hour, but not to exceed five hundred dollars per review, for the related costs of reviewing the audit report and workpapers.

A political subdivision may not pay a public accountant for an audit until the state auditor has accepted the audit. However, a political subdivision may make progress payments to the public accountant. A political subdivision shall retain twenty percent of any progress payment until the audit report is accepted by the state auditor.

The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing board, officers, or employees of the political subdivision disclosed by the audit report or workpapers, and failure to make the corrections shall result in audits being resumed by the state auditor until the irregularities, objectionable accounting procedures, or illegal actions are corrected.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 480

SENATE BILL NO. 2431

(Senators G. Nelson, Lee, Traynor)
(Representatives DeKrey, Eckre, Kliniske)

BIENNIAL REPORTS

AN ACT to amend and reenact section 54-12-05 of the North Dakota Century Code, relating to biennial reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-12-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-12-05. Biennial report.

1. The attorney general shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The report must ~~state~~ provide:
 4. ~~a.~~ a. ~~The number, character, condition, and result~~ A summary of the types of the actions prosecuted or defended by the attorney general ~~in~~ on behalf of the state.
 2. ~~b.~~ b. The aggregate cost of prosecuting or defending ~~each action~~ actions on behalf of the state.
 3. ~~c.~~ c. The amount of fines and penalties collected.
2. The attorney general also shall direct attention to any defect in the practical operations of the law relating to revenue and criminal offenses, and shall suggest amendments and changes as in the attorney general's judgment are necessary to subserve the public interest.

Approved March 29, 2001
Filed March 29, 2001

CHAPTER 481

SENATE BILL NO. 2165

(Natural Resources Committee)
(At the request of the Industrial Commission)

STATE BUILDING AUTHORITY LEASES

AN ACT to create and enact section 54-17.2-05.1 of the North Dakota Century Code, relating to the authority of the state building authority to lease and leaseback state property; and to amend and reenact section 54-17.2-23 of the North Dakota Century Code, relating to the calculation of lease payments for capital construction projects financed by the state building authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 54-17.2-05.1 of the North Dakota Century Code is created and enacted as follows:

54-17.2-05.1. Lease of state property to commission - Leaseback to state. Notwithstanding any other provision in this chapter, the state may lease any project or other property to the commission, in lieu of a transfer of title, and the commission may sublease or leaseback any such project or property back to the state in connection with any financing by the commission under this chapter. Any reference in this chapter to the power or authority of the commission or the state to sell, convey, or lease any project or other property to the other must be deemed to include the power or authority to lease, sublease, or leaseback such project or property, as the case may be.

SECTION 2. AMENDMENT. Section 54-17.2-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-17.2-23. State building authority lease payments - Limitation. The general fund amount of lease payments for a biennium associated with capital construction projects financed by the industrial commission acting as the state building authority may not exceed the amount equal to a portion of sales, use, and motor vehicle excise tax collections equal to ten 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. The computation for the authorized general fund lease payments for a biennium must be based on the projected sales, use, and motor vehicle excise tax collections presented to the legislative assembly at the close of the most recently adjourned regular legislative session. Lease payment amounts for any particular project must be calculated as of the date the related bonds are issued.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 482

SENATE BILL NO. 2101

(Government and Veterans Affairs Committee)
(At the request of the Industrial Commission)

MILL AND ELEVATOR ASSOCIATION INSTRUMENT EXECUTION

AN ACT to amend and reenact section 54-18-11 of the North Dakota Century Code, relating to execution of instruments by the North Dakota mill and elevator association; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-18-11 of the North Dakota Century Code is amended and reenacted as follows:

54-18-11. Name in which business conducted and titles taken - Execution of written instruments. All business of the association must be conducted under the name of "North Dakota mill and elevator association". Title to property pertaining to the operation of the association must be obtained and conveyed in the name of the state of North Dakota, doing business as the North Dakota mill and elevator association. Written instruments must be executed in the name of the state of North Dakota, signed by any two members of the industrial commission, of whom the governor must be one, or by the manager of the association within the scope of ~~his~~ the manager's authority, as defined by the commission or by other officers, employees, or legal counsel of the association as authorized by the industrial commission.

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

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 483

SENATE BILL NO. 2100

(Government and Veterans Affairs Committee)
(At the request of the Industrial Commission)

MILL AND ELEVATOR ASSOCIATION CONTRACT PREPAYMENT

AN ACT to create and enact a new section to chapter 54-18 of the North Dakota Century Code, relating to prepayment by the North Dakota mill and elevator association to contractors for construction or equipment; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-18 of the North Dakota Century Code is created and enacted as follows:

Contractor to be paid during progress of work - Retainage - Failure to pay - Rate of interest - Investment of retainage. If the contractor to whom a contract for construction or the provision of equipment to the association is let properly performs the work therein designated, the mill manager, at least once in each calendar month during the continuance of the contract work, shall meet, receive, and consider estimates furnished by the agent, engineer, or architect acting for the association or if not so furnished, then by the contractor, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon the contract, and of the material then upon the ground for use in the contract, subject to retentions of ten percent of each estimate presented until the time the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. Notwithstanding the requirements of any other law, the industrial commission may authorize the mill manager to prepay for equipment prior to delivery to the construction site if the industrial commission determines:

1. Prepayment is in the best interest of the association;
2. The association's interest will be adequately protected; and
3. The equipment is of a type that is not fungible and could not be sold except at a discount to another because it is constructed to specifications required by the association.

Upon completion of ninety-five percent of the contract according to the estimates, the association may pay to the contractor ninety-five percent of the amount retained from previous estimates. Any amount retained after ninety-five percent completion of the contract must be paid to the contractor in such amounts and at such times as are approved by the association, upon estimates by its agent, engineer, or architect or the contractor, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. Immediately after considering and allowing any such estimate, the association shall certify and promptly draw a warrant upon the proper fund and transmit it to the contractor entitled to it. If the association fails or neglects to receive and allow the estimate or certify any estimate or final payment upon completion and acceptance for a period of

more than thirty days from the date of the estimate or completion date, then the estimate or final payment, with any retainage properly payable, shall draw interest from its date at the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of the estimate or completion date until the issuance of a proper warrant therefor. Such interest must be computed and added to the face of the estimate, final payment, or retainage by the officer required to issue the warrant, must be included in the warrant when drawn, and must be charged to the fund from which payment for the improvement is to be made. On the amounts of estimates retained, as provided herein, the association may invest or deposit the retained amounts in the Bank of North Dakota earning interest or dividends for the benefit of the contractor. Any amount so invested or deposited must remain in the name of the association until final payment of all moneys due to the contractor is to be made. Further, no contractor shall use such account in any manner whatsoever until released and received by the contractor upon completion of the contract.

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

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 484

HOUSE BILL NO. 1423 (Representatives Carlson, M. Klein) (Senators Stenehjem, Tollefson)

STATE BUILDING CODE

AN ACT to amend and reenact sections 18-12-25 and 54-21.3-03 of the North Dakota Century Code, relating to the state building code; and to provide for transition.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-12-25 of the North Dakota Century Code is amended and reenacted as follows:

18-12-25. Reference data. The latest edition of the following data must be used as reference and as an aid in the interpretation of this chapter:

1. ~~Uniform Building Code - international conference of State building officials code.~~
2. The National Fire Codes - national fire protection association.
3. ~~Uniform Mechanical Code - international conference of building officials except that section 504(f) of the Uniform Mechanical Code is amended as provided in subsection 4 of section 54-21.3-03.~~
4. National Electrical Code - national fire protection association.

²²³ **SECTION 2. AMENDMENT.** Section 54-21.3-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-21.3-03. State building code - Amendments.

1. ~~The state building code consists of the Uniform Building Code with any existing supplements and the Uniform Mechanical Code with any existing supplements as referenced by the Uniform Building Code, except that section 504(f) of the Uniform Mechanical Code is amended to read as follows:~~

~~Section 504(f). LPG Appliances:~~

~~Liquefied petroleum gas burning appliances, both automatically and manually controlled, may be installed in basements or similar locations only if (a) the appliances are of an American gas association-approved type and installed in accordance with~~

²²³ Section 54-21.3-03 was also amended by section 27 of Senate Bill No. 2032, chapter 488.

~~national fire protection association pamphlets 54 and 58, (b) automatically controlled appliances are equipped with safety shutoff devices of the complete shutoff type, and (c) gas piping has been pressure tested and proven to be gastight.~~

~~The director of the office of management and budget, in cooperation with the state building code advisory committee, shall adopt rules to implement, amend, and periodically update the state building code and may adopt rules to amend the code, which must consist of the international building, residential, mechanical, and fuel gas codes.~~

2. The state building code advisory committee consists of:
 - a. Two representatives appointed by the North Dakota building officials association, one of whom must be from a jurisdiction of fewer than ten thousand people.
 - b. One representative appointed by the North Dakota chapter of the American institute of architects.
 - c. One representative appointed by the North Dakota society of professional engineers.
 - d. One representative appointed by the North Dakota association of builders.
 - e. One representative appointed by the North Dakota association of mechanical contractors.
 - f. One representative appointed by the associated general contractors.
 - g. A fire marshal appointed by the state fire marshal.
 - h. One individual appointed by the state electrical board.

3. The state building code advisory committee shall meet with the director of the office of management and budget or a designee of the director at least once each calendar year to address proposed amendments to the state building code. The director of the office of management and budget may not adopt an amendment to the state building code unless the amendment is approved by a majority vote of:
 - a. One representative appointed by the North Dakota chapter of the American institute of architects;
 - b. One representative appointed by the North Dakota society of professional engineers;
 - c. One representative appointed by the North Dakota association of builders;
 - d. One representative appointed by the North Dakota association of mechanical contractors;

- e. One representative appointed by the associated general contractors; and
 - f. Representatives of eligible jurisdictions as established by administrative rule.
4. For the purposes of manufactured homes, the state building code consists of the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et seq.].
3. 5. The governing body of a city, township, or county that elects to administer and enforce a building code shall adopt and enforce the state building code. However, the state building code may be amended by cities, townships, and counties to conform to local needs.

SECTION 3. TRANSITION. The state building code in effect on January 1, 2001, must remain in effect until publication of rules under section 54-21.3-03 to implement the international building, residential, mechanical, and fuel gas codes as the state building code.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 485

HOUSE BILL NO. 1210

(Representatives Froseth, Brandenburg, Ekstrom, S. Kelsh)

MODULAR STRUCTURE INSPECTIONS

AN ACT to create and enact a new section to chapter 54-21.3 of the North Dakota Century Code, relating to recognition of third-party building, electrical, fire, and plumbing inspections for modular residential and commercial structures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. If Senate Bill No. 2032 of the fifty-seventh legislative assembly does not become effective, a new section to chapter 54-21.3 of the North Dakota Century Code is created and enacted as follows:

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 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 director of the office of management and budget. The director of the office of management and budget shall adopt rules for the certification of inspectors and for the procedures to be followed in conducting inspections of modular residential and commercial structures. If 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.

SECTION 2. If Senate Bill No. 2032 of the fifty-seventh legislative assembly becomes effective, a new section to chapter 54-21.3 of the North Dakota Century Code is created and enacted as follows:

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 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. If 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.

Approved April 13, 2001

Filed April 13, 2001

CHAPTER 486

SENATE BILL NO. 2055

(Senators Solberg, Holmberg, Watne)
(Representatives Eckre, Kliniske, Pietsch)

LIBRARY COORDINATING COUNCIL COMPOSITION

AN ACT to amend and reenact section 54-24.4-01 of the North Dakota Century Code, relating to the composition of the North Dakota library coordinating council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-24.4-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24.4-01. North Dakota library coordinating council - Members - Term.

The North Dakota library coordinating council consists of ~~ten~~ eleven members. The president of the North Dakota library association is an ex officio, voting member of the council. The state librarian is an ex officio nonvoting member of the council. The governor shall appoint ~~eight~~ nine members to the council, one of whom must represent special libraries, one of whom must represent public higher education institution libraries, one of whom must represent private higher education institution libraries, one of whom must represent school libraries, two of whom must represent public libraries, one of whom must represent disabled, economically disadvantaged, and minority populations, and ~~one citizen~~ two citizens at large. The governor shall take into account reasonable geographic considerations when appointing members of the council. The term of each member is three years. ~~Of the initial council, three members must be appointed by the governor for a three-year term, three members must be appointed by the governor for a two-year term, and two members must be appointed by the governor for a one-year term.~~ If at any time during a member's term, the member ceases to possess the qualifications required by this section, the member's office is deemed vacant and the governor shall appoint a qualified representative to complete the term of office. No member may be appointed to serve more than two consecutive three-year terms.

Approved March 28, 2001

Filed March 28, 2001

CHAPTER 487**HOUSE BILL NO. 1169**

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

**CAPITAL IMPROVEMENT FEE PREPAYMENT
REVOLVING FUND**

AN ACT to amend and reenact section 54-27-22 of the North Dakota Century Code, relating to the revolving fund for prepayment of planning and consulting fees for capital improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27-22 of the North Dakota Century Code is amended and reenacted as follows:

54-27-22. Revolving fund for prepayment of consulting and planning fees for capital improvements. Funds must be made available to all state agencies, institutions, and departments from a preliminary planning revolving fund in the state treasury under the control of the director of the office of management and budget for studies, planning, architectural programming, schematic designs, and cost estimates relating to proposed new capital improvements and major remodeling of existing facilities. State agencies, institutions, and departments interested in obtaining planning moneys shall submit a written request detailing the scope and purpose of such project to the director of the office of management and budget. The director shall file such request with, and shall present ~~his~~ the director's recommendations regarding the proposed project and necessary planning moneys to, the budget section of the legislative council. Funds may be advanced only in the event that an authorization has first been received from the budget section. Such funds advanced must be repaid to the preliminary planning revolving fund as moneys become available through legislative appropriation or other sources for the commencement of the project.

Approved February 6, 2001
Filed February 6, 2001

CHAPTER 488

SENATE BILL NO. 2032

(Legislative Council)

(Commerce and Labor Committee)

DEPARTMENT OF COMMERCE

AN ACT to create and enact a new chapter to title 54 of the North Dakota Century Code, relating to creation of a department of commerce; to amend and reenact sections 4-14.1-03, 4-14.1-04, 6-12-02, subsection 6 of section 10-30-04, subsection 4 of section 10-30.5-02, section 10-30.5-05, subsection 6 of section 10-30.6-04, subsection 3 of section 20.1-02-17.1, sections 20.1-02-18.1, 21-11-02, 21-11-03, 21-11-04, 21-11-05, 21-11-06, 24-03-21, subsection 4 of section 26.1-50-01, sections 26.1-50-02, 28-32-01, 40-57.1-04, 49-10.1-17, subsection 4 of section 50-06-01.8, section 52-01-03, subsection 5 of section 52-02.1-01, section 54-01.1-08, subsection 1 of section 54-06-04, section 54-21.2-03, subsection 1 of section 54-21.3-03, sections 54-21.3-04.1, 54-34-12, 54-34-15, 54-34.3-01, 54-34.3-02, 54-34.3-03, 54-34.3-04, 54-34.3-05, 54-34.3-06, 54-34.3-08, 54-34.3-10, 54-34.3-11, 54-34.4-01, 54-34.4-02, 54-34.4-04, subsection 15 of section 54-44.3-20, sections 54-44.5-01, 54-44.5-02, 54-44.5-03, 54-44.5-05, 54-53-02, 55-01-01, 55-06-01, 57-38-29, 57-38-30.3, 57-38-54, subsection 1 of section 57-38.5-01, section 57-38.5-08, and subsection 6 of section 57-39.2-28 of the North Dakota Century Code, relating to merging the division of community services, department of economic development and finance, and tourism department into a department of commerce, income tax filing methods for individuals, and publication of statistics by the tax commissioner; to repeal section 54-34.3-09 of the North Dakota Century Code, relating to the department of economic development and finance; to provide for correction of statutory references; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.1-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-03. Agricultural products utilization commission - Composition - Appointment. The agricultural fuel tax fund must be administered by the agricultural products utilization commission. The commission consists of nine members, five of whom must be appointed by the governor for terms of two years each, arranged so that two terms expire in odd-numbered years and three terms expire in even-numbered years. Three members appointed by the governor must be actively engaged in farming in this state and two members appointed by the governor must be actively engaged in business in this state. The commissioner of agriculture shall appoint one member for a term of two years which expires in odd-numbered years. The member appointed by the commissioner must be actively engaged in farming in this state. Commission members may be reappointed to the commission. Terms of commissioners shall run from the first day of July. The director of the department of commerce division of economic development and finance, the president of North Dakota state university, and the commissioner of agriculture, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

SECTION 2. AMENDMENT. Section 4-14.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-14.1-04. Agricultural products utilization commission - Meetings - Personnel - Reports. The agricultural products utilization commission, which is a ~~division~~ an office of the department of commerce division of economic development and finance, shall meet as necessary and shall report to each session of the legislative assembly. The commission may secure office space, employ needed personnel for the performance of its duties, hire consultants, spend any funds appropriated to the commission, and contract with public entities or private parties for services.

SECTION 3. AMENDMENT. Section 6-12-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-12-02. (Effective for first four taxable years beginning after December 31, 1998) Establishment - Organization. Any financial institution or group of financial institutions may establish a corporation or a limited liability company to own and operate the housing development fund. Except as provided in this chapter, all authority regarding the articles of incorporation or articles of organization is the province of the governing board, which must include a representative of the Bank of North Dakota and a representative of the department of commerce division of economic development and finance. The fund administrator shall maintain the fund as an account at the Bank of North Dakota. The governing board is responsible for adopting policies and procedures governing activities in connection with the fund. The governing board may not distribute more than seventy-five percent of the net profit of the fund in any of the first five years of operation.

SECTION 4. AMENDMENT. Subsection 6 of section 10-30-04 of the North Dakota Century Code is amended and reenacted as follows:

6. Cooperate with and avail itself of the facilities of the department of commerce division of economic development and finance and any other similar governmental agencies; to cooperate with and assist, and otherwise encourage, local organizations in the various communities of the state the purpose of which are the promotion, assistance, and development of the business prosperity and economic welfare of such communities and of this state.

SECTION 5. AMENDMENT. Subsection 4 of section 10-30.5-02 of the North Dakota Century Code is amended and reenacted as follows:

4. The ~~director~~ commissioner of the ~~department of economic development and finance~~ commerce shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation.

SECTION 6. AMENDMENT. Section 10-30.5-05 of the North Dakota Century Code is amended and reenacted as follows:

10-30.5-05. Management. The ~~deputy~~ director of the finance ~~division~~ office of the department of commerce division of economic development and finance must

be the chief executive officer of the corporation. The board of directors shall determine minimum qualifications of all other staff positions.

All investments, contracts, partnerships, limited liability companies, and business transactions of the corporation are the responsibility of the deputy director and the board of directors. The board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior board approval.

SECTION 7. AMENDMENT. Subsection 6 of section 10-30.6-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Cooperate with and avail itself of the facilities of the department of ~~economic development and finance~~ commerce and any other similar governmental agencies; and cooperate with, assist, and otherwise encourage local organizations in the various communities of the state, the purpose of which are the promotion, assistance, and development of the business prosperity and economic welfare of the communities and of this state.

SECTION 8. AMENDMENT. Subsection 3 of section 20.1-02-17.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A detailed impact analysis from the state game and fish department shall be included with the acquisition proposal for board of county commissioner consideration in making recommendations. The analysis by the game and fish department shall include, but shall not be limited to, the recreational and wildlife impacts. In addition, the county agent of the affected county or counties shall prepare an impact analysis for board of county commissioner consideration which shall include the fiscal, social, and agricultural impacts of the proposed acquisition. The state game and fish department shall reimburse the county or counties for any expenses incurred by the county agent in preparing the analysis. The analyses shall also be forwarded to the department of commerce division of community services which shall furnish copies to all interested state agencies and political subdivisions, which agencies and political subdivisions shall have thirty days to review the analyses and return their comments to the division of community services. Upon expiration of the thirty-day period, all comments received by the division of community services shall be forwarded to the state game and fish department. The state game and fish department may, after consideration of such comments, file a final impact analysis with the division of community services and the board of county commissioners.

SECTION 9. AMENDMENT. Section 20.1-02-18.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

20.1-02-18.1. Federal wildlife area acquisitions - Submission to county commissioners, opportunity for public comment, and impact analysis required. The governor, the director, or their designees, responsible under federal law for final approval of land, wetland, and water acquisitions by the United States department of the interior, its bureaus or agencies, for waterfowl production areas, wildlife refuges, or other wildlife or waterfowl purposes, shall submit the proposed acquisitions by certified mail with return receipt to the board of county commissioners of the county

or counties in which the land, wetland, and water areas are located for the board's recommendations.

The board of county commissioners of the county affected, or a designee or designees of the board, shall, within twenty-one days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas. The board shall give public notice of the date, hour, and place where the public may comment on the proposed acquisitions. The notice must be published once each week for two successive weeks in the official newspaper of the county or counties in which the land and water areas are located. The notice must set forth the substance of the proposed action, and must include a legal description of the proposed acquisitions. The board of county commissioners shall make its recommendations by certified mail with return receipt within sixty days after receipt of an acquisition proposal.

A detailed impact analysis from the federal agency involved must be included with the acquisition proposal for board of county commissioner consideration in making recommendations. The analysis must include the recreational and wildlife impacts. In addition, the county agent of the affected county or counties shall prepare an impact analysis for board of county commissioner consideration which must include the fiscal, social, and agricultural impacts of the proposed acquisitions. The department of the interior shall reimburse the county or counties for any expenses incurred by the county agent in preparing the analysis. The analyses must also be forwarded to the department of commerce division of community services, which shall furnish copies to all interested state agencies and political subdivisions, which agencies and political subdivisions have thirty days to review the analyses and return their comments to the division of community services. Upon expiration of the thirty-day period, all comments received by the division of community services must be forwarded to the federal agency involved and to the state official or agency responsible for final acquisition approval. The federal agency may, after consideration of the comments, file a final impact analysis with the governor, the board of county commissioners, and any other state official or agency responsible for final acquisition approval.

SECTION 10. AMENDMENT. Section 21-11-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-02. Application for loan - Form - Contents - Preference of applications. Any privately or cooperatively owned enterprise for the purpose of securing a loan from this state for purposes of planning, constructing, acquiring, equipping, improving, or extending facilities for the conversion of North Dakota's natural resources into low cost power and the generation and transmission of such power, and the acquisition of real and personal property and water and mineral rights needed for such facilities, or any of such purposes, may file an application with the department of commerce division of economic development and finance. The application must be in the form required by the ~~department~~ division and must be accompanied by a complete and fully detailed outline and description of the applicant's plan of operation. In the consideration of applications the ~~department~~ division shall consider the following factors:

1. Preference must be given to applicants with the following qualifications:
 - a. Applicants who are experienced in the generation or transmission of power, and who at the time of application have access to alternate markets for the sale of such power.

- b. Applicants who are residents of North Dakota, or private or cooperative enterprises incorporated under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person, corporation, or limited liability company owns part or all of the stock of the applicant or limited liability companies organized under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person, limited liability company, or corporation owns part or all of the membership interests of the applicant, or is engaged in a partnership or joint enterprise with the applicant.
2. The provisions of subsection 1 do not prohibit the ~~department~~ division from approving loans to applicants not possessing the qualifications therein described, if in the judgment of the ~~department~~ division such approval would better carry out the objectives of this chapter as stated in section 21-11-01.
3. Each application shall include information for the purpose of showing to the ~~department~~ division and may be approved only if the ~~department~~ division determines:
 - a. That the facilities proposed to be financed by the loan will result in significant additional industrial or other economic activity in North Dakota which would not occur in the absence of a state loan.
 - b. That the cost of power furnished by the facilities financed by the loan will be significantly lower than it would be without a loan made under this chapter.
 - c. That the facilities financed will furnish power at the lowest possible cost to stimulate industrial development, benefit the general public, and expand the use of North Dakota fuel resources.
4. In considering applications the ~~department~~ division may establish additional reasonable criteria with respect to the financial qualification of individuals and organizations requesting loans.

SECTION 11. AMENDMENT. Section 21-11-03 of the North Dakota Century Code is amended and reenacted as follows:

21-11-03. Processing of application - Fee - Purpose. The department of commerce division of economic development and finance shall process each application and if it determines the applicant is eligible for the loan and has complied with all requirements, it shall request an application fee of not more than fifty thousand dollars. The fee must be deposited in a special and separate fund in the state treasury and must be expended by the ~~department~~ division of economic development and finance for purposes of investigating the applicant and evaluating the technical and economic feasibility of the plans and specifications as submitted by the applicant. The ~~department~~ division may consult or contract with any person or private, state, or federal department, agency, or entity, for purposes of that investigation or evaluation. All departments, agencies, institutions, and officials of this state and its political subdivisions shall provide to the ~~department~~ division of economic development and finance such aid, information, and assistance as it may request in regard to any matter relative to the applicant or such applicant's plans and specifications. The ~~department~~ division of economic development and finance may conduct any private or public hearing it may deem necessary in the course of that

investigation or evaluation. Any unexpended portion of the funds received as an application fee must be refunded to the applicant after the payment of all costs of investigation and evaluation of the application. There is hereby appropriated from each application fee these funds as may be necessary to pay all costs of investigation and evaluation and pay refunds as provided in this section.

SECTION 12. AMENDMENT. Section 21-11-04 of the North Dakota Century Code is amended and reenacted as follows:

21-11-04. Approval or rejection of application. Upon completion of all investigations and evaluations of any matter relative to the applicant or the submitted application and plan, the department of commerce division of economic development and finance shall either reject the application as submitted, approve the application as submitted, or offer to approve the application if modified in accordance with any recommendation made by the commission as a result of any such investigation or evaluation. If the applicant fails or refuses to agree to those modifications, the application must be rejected.

SECTION 13. AMENDMENT. Section 21-11-05 of the North Dakota Century Code is amended and reenacted as follows:

21-11-05. Approved application filed with industrial commission. Upon approval of the application, as submitted or modified, the department of commerce division of economic development and finance shall file the application, along with its report and recommendations, received by it as a result of any investigation and evaluation, with the ~~state~~ industrial commission. The department of ~~economic development and finance~~ commerce shall prepare and submit any necessary legislation for the appropriation of additional funds or the authorization of the issuance of bonds at the following session of the legislative assembly, or at a special session if called in accordance with the constitution.

SECTION 14. AMENDMENT. Section 21-11-06 of the North Dakota Century Code is amended and reenacted as follows:

21-11-06. Disbursements of loan - Inspection fee. If the industrial commission finds that the approved loan application has been filed and processed as required by this chapter and the proposed loan agreement is in proper legal form and the amount to be disbursed thereunder, with other previous disbursements, does not exceed the funds appropriated for that purpose, it shall authorize the execution of the loan agreement with the applicant by the director of the department of commerce division of economic development and finance on behalf of the state. Prior to the disbursement of any funds pursuant to the loan agreement, the applicant shall deliver to the director of the division of economic development and finance a supervision fee in such amount as may be specified in the loan agreement, which fee must be deposited in a special fund in the state treasury. The fee must be expended by the ~~department~~ division of economic development and finance for the purpose of periodic inspection of the construction of such power generation or transmission facilities, and disbursements to the borrower under the loan agreement may be made only upon certification by the director or a person appointed by the director ~~that~~ which the construction is being carried on in accordance with the loan agreement and that the loan funds are due the borrower under the agreement. Upon the completion of the construction of the facilities, any unexpended balance of the inspection fee must be refunded to the borrower. There is hereby appropriated from each inspection fee those funds as may be necessary to provide for the inspections and refunds as provided in this section.

SECTION 15. AMENDMENT. Section 24-03-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-03-21. Preparation of road maps - Publication of tourist information.

The commissioner shall prepare for general distribution, road maps of the state highway system and other roads as the commissioner determines necessary. Any tourist-oriented material printed on road maps must be prepared by the department of commerce division of tourism ~~department~~ at no cost to the department of transportation.

SECTION 16. AMENDMENT. Subsection 4 of section 26.1-50-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth. Qualification as a primary sector business under this subsection must be determined by the department of commerce division of economic development and finance.

SECTION 17. AMENDMENT. Section 26.1-50-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-50-02. Establishment - Organization. Any insurer or group of insurers may establish a corporation or limited liability company to own and operate the North Dakota low-risk incentive fund. Except as provided in this chapter, all authority regarding the articles of incorporation or articles of organization is the province of the governing board, which must include a representative of the Bank of North Dakota and the director of the department of commerce division of economic development and finance. The Bank of North Dakota shall administer the fund; however, the governing board is responsible for adopting fund policies and procedures. The governing board may not distribute more than seventy-five percent of the net profit of the fund in any of the first five years of operation.

²²⁴ **SECTION 18. AMENDMENT.** Section 28-32-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

28-32-01. (Effective through December 31, 2002) Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative

²²⁴ Section 28-32-01 was created by section 12 of House Bill No. 1030, chapter 293, and amended by section 4 of Senate Bill No. 2251, chapter 501, and section 2 of Senate Bill No. 2446, chapter 140.

proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-05.1 or another specific statute or rule, unless the matter has been specifically converted to another type or proceeding under section 28-32-05.1. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.

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, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules 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 state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03,~~ rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.
 - b. The adjutant general with respect to the division of emergency management.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of commerce with respect to the division of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational telecommunications council.
 - i. The board of equalization.
 - j. The board of higher education.

- k. The Indian affairs commission.
 - l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, the North Dakota mill and elevator association, and the 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 16.1-11-02.2.
3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.
 4. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-05; and any administrative agency which, when authorized by law, files such a complaint before such agency or any other agency.
 5. "Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, an administrative law judge from the office of administrative hearings, or any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.
 6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.

7. "Order" means any agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, but does not mean an executive order issued by the governor.
8. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party. In a hearing for the suspension, revocation, or disqualification of an operator's license under title 39, the term may include each city and each county in which the alleged conduct occurred, but the city or county may not appeal the decision of the hearing officer.
9. "Person" includes an individual, association, partnership, corporation, limited liability company, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
10. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.
11. "Rule" means the whole or a part of an agency statement of general applicability that implements or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:
 - a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
 - b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
 - c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
 - d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.
 - e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.

- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, that is explanatory and not intended to have the force and effect of law.

(Effective January 1, 2003) Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-05.1 or another specific statute or rule, unless the matter has been specifically converted to another type or proceeding under section 28-32-05.1. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.
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, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules 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 state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03,~~ rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.

- b. The adjutant general with respect to the division of emergency management.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational telecommunications council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, the North Dakota mill and elevator association, and the 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.
3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by law.
 4. "Complainant" means any person who files a complaint before an administrative agency pursuant to section 28-32-05; and any administrative agency which, when authorized by law, files such a complaint before such agency or any other agency.
 5. "Hearing officer" means any agency head or one or more members of the agency head when presiding in an administrative proceeding, or, unless prohibited by law, one or more other persons designated by the agency head to preside in an administrative proceeding, an administrative law judge from the office of administrative hearings, or any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.
 6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.
 7. "Order" means any agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, but does not mean an executive order issued by the governor.
 8. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party. In a hearing for the suspension, revocation, or disqualification of an operator's license under title 39, the term may include each city and each county in which the alleged conduct occurred, but the city or county may not appeal the decision of the hearing officer.
 9. "Person" includes an individual, association, partnership, corporation, limited liability company, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.
 10. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.
 11. "Rule" means the whole or a part of an agency statement of general applicability that implements or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. The

term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:

- a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.
- b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the defense, prosecution, or settlement of cases, if the disclosure of the statement would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the state.
- c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
- d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.
- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, that is explanatory and not intended to have the force and effect of law.

SECTION 19. AMENDMENT. Section 40-57.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-57.1-04. Exemption from income tax - Notice to competitors - Limitations. Upon application by a project operator to the state board of equalization, the net income of a project may be exempt from state income tax for a period not exceeding five years from commencement of project operations. The application for the exemption must be reviewed as to the eligibility of the project by the department of commerce division of economic development and finance and its recommendations forwarded to the state board of equalization. The project operator shall provide notice to competitors in the manner prescribed by the state board of equalization. The board shall determine whether the granting of the exemption is in the best interest of the people of North Dakota and, if it so determines, approve the exemption. The board shall, after making its determination, certify the findings back to the applicant and to the tax commissioner. Nothing contained herein shall have the effect of exempting the project from filing an annual income tax return.

SECTION 20. AMENDMENT. Section 49-10.1-17 of the North Dakota Century Code is amended and reenacted as follows:

49-10.1-17. Agreements to restore Amtrak service. The governor or the director of the department of transportation may make agreements in accordance with applicable federal law with the state of Montana and relevant federal agencies for the renewal of service on the Amtrak north coast Hiawatha route from Fargo to Spokane, Washington. The governor, the director of the department of transportation, or the ~~director of the department of economic development and finance~~ commerce commissioner of commerce may enter agreements with any political subdivision, state, and federal agency for the restoration of daily service on the Amtrak empire builder route.

²²⁵ **SECTION 21. AMENDMENT.** Subsection 4 of section 50-06-01.8 of the North Dakota Century Code is amended and reenacted as follows:

4. The department of ~~economic development and finance~~ commerce, job service North Dakota, county social service boards, and any other state agency determined appropriate shall cooperate with the department to ensure the success of the program. Local government agencies are encouraged to cooperate with the department.

SECTION 22. AMENDMENT. Section 52-01-03 of the North Dakota Century Code is amended and reenacted as follows:

52-01-03. Disclosure of information. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual must be held confidential and may not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or claimant's legal representative must be supplied with information from the records of the job insurance division, to the extent necessary for the proper presentation of the claimant's claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to the claim. Subject to restrictions as the bureau by rule may prescribe, the information may be made available to any agency of this or

²²⁵ Section 50-06-01.8 was repealed by section 6 of House Bill No. 1108, chapter 418.

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.

The bureau may provide the workers compensation bureau, the state commissioner of labor, the department of ~~economic development and finance~~ 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, the state department of ~~economic development and finance~~ commerce, the state tax commissioner, and the North Dakota occupational information coordinating committee. 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.

Whenever the bureau obtains information on the activities of a contractor doing business in this state of which officials of the secretary of state, workers compensation bureau, or the tax commissioner may be unaware and that may be relevant to duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

The bureau shall request and exchange information as required of the bureau under federal law with any specified governmental agencies. Any information so provided may be used only for the purpose of administering the duties of such governmental agencies.

SECTION 23. AMENDMENT. Subsection 5 of section 52-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Department" means the department of ~~economic development and finance~~ commerce.

SECTION 24. AMENDMENT. Section 54-01.1-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-01.1-08. Adoption of rules and regulations. State agencies may consult with the department of commerce division of community services to establish regulations and procedures for implementation of the provisions of this chapter and to establish such regulations and procedures necessary to assure:

1. That the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;
2. That a displaced person who makes proper application for a payment authorized by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and
3. That any displaced person aggrieved by a determination as to eligibility for a payment, or as to the amount of a payment, may have the application reviewed by the head or governing body of the state agency.

²²⁶ **SECTION 25. AMENDMENT.** Subsection 1 of section 54-06-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The following executive and administrative officers and departments shall submit to the governor and the secretary of state reports covering their operations for the two preceding fiscal years, except as otherwise provided by law, not later than the first day of December each year after the regular session of the legislative assembly:
 - a. Secretary of state.
 - b. State auditor.
 - c. Insurance commissioner.
 - d. Attorney general.
 - e. Agriculture commissioner.
 - f. Superintendent of public instruction.
 - g. State tax commissioner.
 - h. Public service commission.
 - i. Department of corrections and rehabilitation.
 - j. Department of transportation.
 - k. State department of health.
 - l. Department of human services.

²²⁶ Section 54-06-04 was also amended by section 88 of Senate Bill No. 2164, chapter 88, and section 12 of Senate Bill No. 2424, chapter 503.

- m. Workers compensation bureau.
- n. Office of management and budget.
- o. State treasurer.
- p. Commissioner of labor.
- q. Department of banking and financial institutions.
- r. ~~Department of economic development and finance.~~
- s. Game and fish department.
- ~~t.~~ s. Industrial commission.
- ~~u.~~ t. Job service North Dakota.
- ~~v.~~ u. Board of university and school lands.

SECTION 26. AMENDMENT. Section 54-21.2-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-21.2-03. Energy conservation standards. The standards for energy conservation in new building construction, for thermal design conditions and criteria for buildings, and for adequate thermal resistance in regard to the design and selection of mechanical, electrical service, and illumination systems and equipment which will enable the effective use of energy in new buildings, must at least equal the energy conservation code based on the Council of American Building Officials Model Energy Code, 1989 Edition. The ~~office of management and budget~~ department of commerce shall adopt rules to implement, update, and amend the Model Energy Code.

²²⁷ **SECTION 27. AMENDMENT.** Subsection 1 of section 54-21.3-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The state building code consists of the Uniform Building Code with any existing supplements and the Uniform Mechanical Code with any existing supplements as referenced by the Uniform Building Code, except that section 504(f) of the Uniform Mechanical Code is amended to read as follows:

Section 504(f). LPG Appliances.

Liquefied petroleum gas burning appliances, both automatically and manually controlled, may be installed in basements or similar locations only if (a) the appliances are of an American gas association-approved type and installed in accordance with national fire protection association pamphlets 54 and 58, (b)

²²⁷ Section 54-21.3-03 was also amended by section 2 of House Bill No. 1423, chapter 484.

automatically controlled appliances are equipped with safety shutoff devices of the complete shutoff type, and (c) gas piping has been pressure tested and proven to be gastight.

The ~~director of the office of management and budget~~ department of commerce shall adopt rules to implement and periodically update the code and may adopt rules to amend the code.

SECTION 28. AMENDMENT. Section 54-21.3-04.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-21.3-04.1. Accessibility standards. Notwithstanding section 54-21.3-04, every building or facility subject to the federal Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327] must conform to the accessibility standards of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36]. State and political subdivision entities may not claim the exceptions to the requirement that elevators be installed in certain buildings as those exceptions are stated in exception 1 to section 4.1.3(5) and in section 4.1.6(1)(k)(i) in the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36. A structural change to an existing state or political subdivision building or facility is not required if another method is effective in achieving compliance with regulations adopted under Public Law 101-336. For public accommodations, an alternative to a structural change in existing buildings or facilities is permitted only after it has been documented, in accordance with regulations adopted under Public Law 101-336, that a particular structural change is not readily achievable. A state agency or the governing body of a political subdivision shall require from any person preparing plans and specifications for a building or facility subject to the Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327], a statement that the plans and specifications are, in the professional judgment of that person, in conformance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36, subject to the exception stated in this section. A statement of conformance must be submitted to the department of commerce division of community services for recording.

SECTION 29. AMENDMENT. Section 54-34-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34-12. ~~Department~~ Division of economic development and finance to establish venture capital network - Duties and functions. The department of commerce division of economic development and finance may establish, from funds appropriated to or otherwise available to the department of commerce, the venture capital network as a clearinghouse for information on informal risk capital investment opportunities in the state. The ~~department~~ division of economic development and finance may:

1. Enter ~~into~~ service contracts on a competitive bid basis with public and private agencies, institutions, organizations, and individuals for the purpose of establishing and operating the venture capital network.
2. Receive and approve contract proposals for the purpose of establishing the venture capital network.
3. Solicit the support and contributions of public and private agencies, organizations, institutions, and individuals.

4. Accept and administer contributions for the purpose of operating the venture capital network.
5. Advertise and promote the venture capital network.

SECTION 30. AMENDMENT. Section 54-34-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34-15. Private sponsor. The department of commerce division of economic development and finance may endeavor to locate a private sector sponsor or group of sponsors to assume administration of the venture capital network.

SECTION 31. AMENDMENT. Section 54-34.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-01. Department of commerce division of economic development and finance established - Mission. The ~~North Dakota~~ department of commerce division of economic development and finance is established to assume the functions, powers, and duties of the department of economic development ~~commission~~ and finance with respect to programs and other efforts intended to enhance the economic development of the state. The mission of the ~~department division~~ is to develop strategies and programs to:

1. Facilitate the growth, diversification, and expansion of existing enterprises and the attraction and creation of new wealth-generating enterprises in the state;
2. Promote economic diversification and innovation within the basic industries and economic sectors of this state, including strategies and programs designed to specialize and focus the state's economy on advanced agriculture and food processing, energy byproduct development, export services and tourism, and advanced manufacturing;
3. Promote increased productivity and value-added products, processes, and services in the state, and the export of those goods and services by North Dakota enterprises to the nation and to the world;
4. Maintain and revitalize economically depressed rural areas by working in close collaboration with local communities and by encouraging communities to enter into cooperative relationships for more efficient and effective education, health care, government service, and infrastructure maintenance;
5. Forge a supportive partnership with the Bank of North Dakota, the board of higher education and the state's institutions of higher education, regional planning councils, local development organizations and authorities, the Myron G. Nelson Fund, Incorporated, the state's nonprofit development corporations, and other appropriate private and public sector organizations in achieving the economic goals of the state; and
6. Identify those statutes, administrative rules, and policies that impede the attraction, creation, and expansion of businesses and job creation in this state.

SECTION 32. AMENDMENT. Section 54-34.3-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-02. Definitions. As used in ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of ~~economic development and finance~~ commerce.
2. "Director" means the director of the department of commerce division of economic development and finance.
3. "Division" means the department division of economic development and finance.

SECTION 33. AMENDMENT. Section 54-34.3-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-03. ~~Department~~ Division structure. The ~~department~~ division consists of:

1. A ~~division of finance~~ office; and
2. An international trade office; and
3. Other ~~divisions~~ offices that the director organizes and establishes as necessary to carry out most efficiently and effectively the mission and duties of the ~~department~~ division.

SECTION 34. AMENDMENT. Section 54-34.3-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-04. ~~Department~~ director - ~~Appointment~~ Director - ~~Compensation~~ - ~~Duties~~. A director shall supervise and control the ~~department~~ division. ~~The governor shall appoint as director a person who is qualified by training, knowledge, and experience that is necessary to ensure a high degree of professional competency in carrying out the duties of the director as enumerated in this section. The director shall serve at the will of the governor and shall receive a salary set by the governor within the limits of legislative appropriations.~~ The director shall:

1. Manage the internal operations of the ~~department~~ division and establish policies that promote the orderly and efficient administration of the ~~department~~ division;
2. Appoint personnel as may be determined necessary to carry out ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter and fix their compensation within the limits of legislative appropriations;
3. Assume central responsibility to develop, implement, and coordinate within state government a comprehensive program of economic development consistent with the mission of the ~~department~~ division;
4. Coordinate that program of economic development with all other appropriate state and local government departments, agencies, institutions, and organizations that perform research, develop and administer programs, gather statistics, or perform other functions

relating to economic development, and those government entities shall advise, cooperate, and provide reasonable assistance to the director in carrying out ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter;

5. Advise, and cooperate with, departments and agencies of the federal government and of other states, private business and agricultural organizations and associations, research institutions, and any individual or other private or public entity, and call upon those entities or individuals for consultation and assistance in their respective fields of endeavor or interest in order that the ~~department~~ division and the state may benefit from up-to-date technical advice, information, and assistance;
6. Cooperate with individuals and both public and private entities, including the state's congressional delegation, in identifying and pursuing potential sources of funding and to receive those funds to be expended for purposes consistent with ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter;
7. Have authority to enter into contracts upon terms and conditions as determined by the director to be reasonable and to effectuate the purposes of ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter; and
8. ~~Report at least annually to an interim committee designated by the legislative council on performance of all divisions of the department of economic development and finance. The report must include the amount of success and satisfaction the department of economic development and finance has in meeting business-client, economic-developer, and community-client needs and expectations. The report must also include a comparison of dollars spent to the economic benefits created of all programs administered or supervised by the director; and~~
9. Have authority to do any and all other things necessary and proper to carry out ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter.

SECTION 35. AMENDMENT. Section 54-34.3-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-05. ~~Division of finance~~ Finance office - Deputy director. The director shall appoint a deputy director who shall administer the ~~division of 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 ~~division of finance 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 ~~division office~~, to business and industry, local governments, and other entities and individuals in the state consistent with the mission of the ~~department office~~. The ~~division of 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.

SECTION 36. AMENDMENT. Section 54-34.3-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-06. ~~Divisions~~ Division offices. The director shall organize and establish other ~~divisions~~ offices as necessary to carry out most efficiently and effectively the mission and duties of the ~~department~~ division, except that the ~~department~~ division must contain:

1. ~~An office of~~ A North Dakota American Indian business development office to assist North Dakota tribal and individual economic development representatives and North Dakota American Indian entrepreneurs with access to state and federal programs designed to assist them.
2. ~~An office of~~ A North Dakota women's business development office to develop and administer the North Dakota women's business program, to establish and fund the women's business leadership council, certify women-owned businesses for federal or state contracting and to recruit, train, and assist women entrepreneurs to develop and diversify their businesses. The office must have an administrator and staff sufficient to implement ~~its~~ the office's programs.

SECTION 37. AMENDMENT. Section 54-34.3-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-08. Patents. The ~~department~~ division of economic development and finance, the North Dakota development fund, incorporated, and the North Dakota agricultural products utilization commission may hold or assign for remuneration all or a portion of their interest in patents or royalty rights acquired in the course of their operation and performance of duties as provided by law.

SECTION 38. AMENDMENT. Section 54-34.3-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-10. Commission on the status of women - Appointment - Expenses - Duties. There is established a commission on the status of women. ~~The~~ This commission consists of five members. The governor shall appoint each member for a term of four years, staggered so that the term of at least 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~~ This commission shall coordinate activities and serve as a clearinghouse and an advisory group to the ~~department~~ division for information relating to economic development programs that focus on career development for women. ~~The~~ This commission shall prepare for and perform followup duties in connection with state, 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 economic and career development of women.

SECTION 39. AMENDMENT. Section 54-34.3-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-11. Mutual fund capital pool - Authorization. The ~~department~~ division of economic development and finance, in conjunction with the agricultural products utilization commission, may establish a mutual fund capital pool to attract farm and nonfarm investments in value-added processing projects.

SECTION 40. AMENDMENT. Section 54-34.4-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.4-01. ~~Tourism department~~ Division of tourism - Director.

4. The division of tourism ~~department~~ is established to foster and promote tourism to, and within, the state and the full development of the state's tourism resources, and to serve as a planning and coordinating agency for tourism-related programs of the state and the state's political subdivisions.
2. ~~The governor shall appoint a director of the tourism department who shall serve at the will of the governor.~~ The director shall supervise and control the division of tourism ~~department~~.

SECTION 41. AMENDMENT. Section 54-34.4-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.4-02. Duties of director. The director of the department of commerce division of tourism ~~department~~, within the limits of legislative appropriations, shall:

1. Implement the state's tourism policy;
2. Prepare and update annually a tourism master plan for the development of tourism in the state which identifies the state's tourism resources, estimates the impact of tourism on the state's economy, and proposes a five-year plan for activities of the division;
3. Measure and forecast visitor volume, receipts, and related social and economic impacts;
4. Work with the private sector and local, state, and federal agencies to develop the state's tourism-related infrastructure, facilities, services, and attractions, including the state's highways and parks;
5. Organize and coordinate programs designed to promote tourism to, and within, the state through various means. Those means may include:
 - a. Display advertising in magazines and newspapers;
 - b. Advertising on radio and television or other advertising media;
 - c. Publishing pamphlets, brochures, and other graphic and pictorial materials; and
 - d. Aiding and assisting representatives of the media to ensure greater coverage of the state's visitor attractions;
6. Participate in travel shows;

7. Supervise and administer visitor information centers that receive funding from the state;
8. Develop opportunities for professional and technical education and training in the visitor industry;
9. Foster an understanding among the state's residents of the economic importance to the state of hospitality and tourism;
10. Cooperate with local, state, and federal agencies and organizations and the private sector for the promotion and development of tourism to, and within, the state;
11. Provide advice and technical assistance to local, public, and private tourism organizations in promoting and developing tourism; and
12. Monitor the policies and programs of state agencies that significantly affect the visitor industry, notify those agencies of the effects of their actions on travel to, and within the state, and if necessary recommend programs or policy changes to those agencies.

²²⁸ **SECTION 42. AMENDMENT.** Section 54-34.4-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.4-04. North Dakota motion picture development office - Advisory board. The North Dakota motion picture development office is a part of the department of commerce division of tourism ~~department~~. The office shall promote North Dakota as a location for shooting films, television shows, documentaries, and commercials, and shall provide technical expertise to persons desiring to use the state as a filming location. The director of the division of tourism ~~department~~ ~~shall~~ may appoint staff necessary to fulfill the functions and duties of the office and ~~shall~~ may appoint an advisory board of no more than ten members to assist in advising the office and to provide technical expertise to offer prospective film companies seeking locations and advice. The board shall serve without compensation, except reimbursement for actual and necessary expenses at the same rate as allowed other state officers to be paid from funds available to the office within the limits of legislative appropriations.

SECTION 43. A new chapter to title 54 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. "Cabinet" means the North Dakota commerce cabinet.
2. "Commissioner" means the commissioner of commerce.
3. "Department" means the department of commerce.

²²⁸ Section 54-34.4-04 was also amended by section 19 of Senate Bill No. 2019, chapter 44.

4. "Foundation" means the North Dakota economic development foundation.

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

1. The department must consist of:
 - a. A division of community services;
 - b. A division of economic development and finance;
 - c. A division of tourism;
 - d. A division of workforce development; and
 - e. Any division the commissioner determines necessary to carry out this chapter.
2. The commissioner shall appoint the director of any division created by the commissioner under subsection 1. Effective August 1, 2003, the commissioner shall appoint the directors of the division of community services, division of economic development and finance, and division of workforce development. Effective August 1, 2005, the commissioner shall appoint the director of the division of tourism. Each director appointed by the commissioner serves at the pleasure of the commissioner and is entitled to receive a salary set by the commissioner within the limits of legislative appropriation. Until August 1, 2003, the governor shall appoint the directors of the division of community services, division of economic development and finance, and division of workforce development and until August 1, 2005, the governor shall appoint the director of the division of tourism. The individuals appointed by the governor shall serve at the pleasure of the governor and are entitled to receive a salary set by the governor within the limits of legislative appropriations.

Commissioner of commerce - Duties. With the advice and counsel of the North Dakota development foundation, the governor shall appoint a commissioner to supervise, control, and administer the department. The commissioner serves at the pleasure of the governor and receives a salary set by the governor within the limits of legislative appropriations. The commissioner:

1. Shall file an oath of office in the usual form before commencing to perform the duties of the commissioner;
2. Shall serve as chairman of the cabinet;
3. Shall prepare the cabinet's list identifying economic development moneys included in budget requests of cabinet agencies;
4. Shall appoint personnel as may be determined necessary to carry out the duties of the department;

5. Shall manage the operations of the department and oversee each of the divisions;
6. Shall assume central responsibilities to develop, implement, and coordinate a working network of commerce service providers;
7. Shall coordinate the department's services with commerce-related services of other state agencies;
8. Shall advise and cooperate with departments and agencies of the federal government and of other states; private businesses, agricultural organizations, and associations; and research institutions; and with any individual or other private or public entity;
9. May enter contracts upon terms and conditions as determined by the commissioner to be reasonable and to effectuate the purposes of this chapter;
10. Shall report between the first and tenth legislative days of each regular legislative session to a standing committee of each house of the legislative assembly as determined by the legislative council and shall report annually to the foundation:
 - a. On the department's goals and objectives since the last report;
 - b. On the department's goals and objectives for the period until the next report;
 - c. On the department's long-term goals and objectives;
 - d. On the department's activities and measurable results occurring since the last report; and
 - e. On commerce benchmarks, including the average annual wage in the state, the gross state product exclusive of agriculture, and the number of primary sector jobs in the state;
11. Shall adopt rules necessary to implement this chapter; and
12. May take any actions necessary and proper to implement this chapter.

North Dakota economic development foundation - Executive committee

- Purpose. 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:
 - a. Provide the governor advice and counsel in selecting the commissioner;
 - b. Serve in an advisory role to the commissioner;
 - c. Develop a strategic plan for economic development in the state and set accountability standards, measurements, and benchmarks to evaluate the effectiveness of the department in implementing the strategic plan;
 - d. Develop a strategic plan for the development of value-added agriculture in the state; and
 - e. Monitor tourism and economic development activities and initiatives of the department.

Compensation and reimbursement of foundation members. The foundation may establish the level of compensation to which a foundation member is entitled. A foundation member is entitled to reimbursement for mileage and expenses as provided for state officers.

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 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.

Cooperation with other agencies or private entities to jointly publish or mail publications. The department may cooperate with other state agencies or with a private entity for the purpose of jointly publishing or distributing information or publications as provided in section 54-06-04.3.

²²⁹ **SECTION 44. AMENDMENT.** Subsection 15 of section 54-44.3-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. Officers and employees of the department of ~~economic development and finance~~ commerce.

SECTION 45. AMENDMENT. Section 54-44.5-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.5-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Community action agency" means a not-for-profit corporation that has authority under its charter and bylaws to receive funds to administer community action programs and which was officially designated as a community action agency or a community action program under section 210 of the Economic Opportunity Act of 1964 [Pub. L. 88-452; 78 Stat. 508; 42 U.S.C. 2701 et seq.], unless the community action agency or a community action program lost its designation as a result of failure to comply with the provisions of the federal act.
2. "Community action program" means a community-based and operated program that includes an intake assessment and referral capability in each of its counties and is designed to include a number of projects or components to provide a range of services and activities having a measurable and potentially major impact on causes and conditions of poverty in the community or those areas of the community where poverty is a particularly acute problem. These services and activities may include activities designed to provide opportunities for eligible persons to:
 - a. Secure and retain meaningful employment;
 - b. Attain an adequate education;
 - c. Make better use of available income;
 - d. Obtain and maintain adequate housing and suitable living environment;
 - e. Obtain emergency assistance through grants and loans to meet immediate and urgent individual and family needs, including the need for health services, nutritious food, housing, and employment-related assistance;
 - f. Maximize the role community action agencies play in supportive mechanisms available to North Dakota families;

²²⁹ Section 54-44.3-20 was also amended by section 9 of House Bill No. 1010, chapter 10.

- g. Remove obstacles and solve problems that block achievement of self-sufficiency;
 - h. Achieve greater participation in the affairs of the community; and
 - i. Make more effective use of other programs.
3. "Department" means the department of commerce.
 4. "Director" means the director of the division of community services.
 4. 5. "Division" means the department division of community services.

SECTION 46. AMENDMENT. Section 54-44.5-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.5-02. Division of community services - Creation. The division of community services is established in the ~~office of management and budget department~~ department to provide technical assistance to local governments, state agencies, and the executive branch in the area of community and rural planning and development, policy research and development, and grant program implementation. The ~~director of the office of management and budget commissioner~~ shall appoint a director of the division upon the basis of education and experience. 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 commissioner~~. The director of the division may employ such other professional, technical, and clerical persons as may be necessary and may fix their compensation within the limits of legislative appropriation. All personnel within the division must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

SECTION 47. AMENDMENT. Section 54-44.5-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.5-03. Powers and duties of the director. The director shall direct and supervise, with the approval of the ~~director of the office of management and budget commissioner~~, all the administrative and technical activities of the division.

SECTION 48. AMENDMENT. Section 54-44.5-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.5-05. Continuing appropriation. There is hereby appropriated as a standing and continuing appropriation to the ~~division of community services department~~ department for the purpose of carrying out the provisions of this chapter, including the administration of such provisions, all moneys returned as repayments of federal or other funds granted under the community development loan fund, and all earnings from the investment of such moneys, which may be received from time to time by the division. Administrative expenses may only be charged against such moneys to the extent permitted by federal law or regulations.

SECTION 49. AMENDMENT. Section 54-53-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-53-02. Advisory transportation council - Composition. There is hereby established a transportation council ~~which 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 ~~and it~~. The council shall elect its

own chairman. The council membership ~~shall consist~~ 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 public service commission.
3. The North Dakota farm bureau.
4. The North Dakota farmers union.
5. ~~The livestock industry council~~ North Dakota stockmen's 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 ~~farmers~~ grain dealers association.
9. ~~The North Dakota railway lines.~~
- ~~10.~~ The North Dakota motor carriers association.
44. 10. The North Dakota aeronautics commission.
- ~~12.~~ ~~A traffic counsel selected by the members of the council appointed by the above-named organizations.~~

Members of the council shall serve without pay, but they may receive reimbursement for actual and necessary expenses incurred in the performance of their duties, if authorized by the director.

The council shall consult with the institute in matters of policy affecting the administration of this chapter and in the development of transportation in the state of North Dakota. The council shall meet at the call of the executive director or upon the written request of three or more members of the council.

²³⁰ **SECTION 50. AMENDMENT.** Section 55-01-01 of the North Dakota Century Code is amended and reenacted as follows:

55-01-01. State historical board. There is a state historical society of North Dakota which is under the supervision and control of the state historical board. The board consists of seven members who are appointed by the governor. Each member appointed to the board must be a citizen and resident of the state of North Dakota. Appointments are for a term of three years from the first day of July to the thirtieth day of June of the third year or until a successor has been appointed and qualified. The governor shall appoint two members for terms commencing in 1996,

²³⁰ Section 55-01-01 was also amended by section 18 of Senate Bill No. 2424, chapter 503.

two members for terms commencing in 1997, and three members for terms commencing in 1998. Vacancies occurring other than by the expiration of an appointive term must be filled by appointment for the remainder of the term only in the same manner as regular appointments. The board of directors shall select from its membership a president, vice president, and secretary to serve as officers of the board. The secretary of state, director of the parks and recreation department, director of the department of transportation, director of the department of commerce division of tourism department, and state treasurer are ex officio members of the board and shall take care that the interests of the state are protected. Each ex officio member may appoint a designee to attend meetings with full voting privileges.

²³¹ **SECTION 51. AMENDMENT.** Section 55-06-01 of the North Dakota Century Code is amended and reenacted as follows:

55-06-01. Yellowstone-Missouri-Fort Union commission. There is a Yellowstone-Missouri-Fort Union commission, hereinafter referred to as the "commission", declared to be a governmental agency with the authority to exercise the powers specified herein, or which may be reasonably implied, composed of the governor as chairman, the president of the senate, the speaker of the house, the superintendent of the state historical board, the director commissioner of the department of economic development and finance commerce, all ex officio, and five citizens of the state to be appointed by the governor who shall serve without compensation for the purpose of investigating, in cooperation with the state of Montana and the national park service, the historical importance and significance of the area and for formulating and executing plans for the preservation of the historic sites illustrative of the history of the United States. The commission may expend its operating expenses and other funds provided by legislative appropriations, and public and private grants, for programs, improvements, and facilities to preserve and improve the Yellowstone-Missouri confluence area.

SECTION 52. AMENDMENT. Section 57-38-29 of the North Dakota Century Code is amended and reenacted as follows:

57-38-29. Rate of tax on individuals Optional method of computing tax. Notwithstanding the other provisions of this chapter, an individual, estate, or trust may elect to determine state income tax liability by applying the provisions of this section. A tax is hereby imposed upon every individual, to be levied, collected, and paid annually with respect to the taxable income of such individual as defined in this chapter, computed at the following rates:

1. On taxable income not in excess of three thousand dollars, a tax of two and sixty-seven hundredths percent.
2. On taxable income in excess of three thousand dollars and not in excess of five thousand dollars, a tax of four percent.
3. On taxable income in excess of five thousand dollars and not in excess of eight thousand dollars, a tax of five and thirty-three hundredths percent.

²³¹ Section 55-06-01 was also amended by section 48 of Senate Bill No. 2424, chapter 503.

4. On taxable income in excess of eight thousand dollars and not in excess of fifteen thousand dollars, a tax of six and sixty-seven hundredths percent.
5. On taxable income in excess of fifteen thousand dollars and not in excess of twenty-five thousand dollars, a tax of eight percent.
6. On taxable income in excess of twenty-five thousand dollars and not in excess of thirty-five thousand dollars, a tax of nine and thirty-three hundredths percent.
7. On taxable income in excess of thirty-five thousand dollars and not in excess of fifty thousand dollars, a tax of ten and sixty-seven hundredths percent.
8. On taxable income in excess of fifty thousand dollars, a tax of twelve percent.

²³² **SECTION 53. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30.3. Simplified ~~optional~~ method of computing tax.

1. ~~Notwithstanding the other provisions of this chapter, an individual, estate, or trust may elect to determine state income tax liability by applying the provisions of this section. Any taxpayer electing to determine the taxpayer's income tax liability pursuant to this section is only eligible for those adjustments or credits which are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return pursuant to the provisions of this chapter, but who has not computed a federal taxable income or federal income tax liability figure shall compute such a federal taxable income figure using a pro forma return pursuant to the provisions of this section in order to determine a federal income tax liability figure to be used as a starting point in computing state income tax.~~
2. 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. This tax is fourteen percent of the individual's, estate's, or trust's adjusted federal income tax liability for the taxable year. 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 income tax liability figure, shall compute a federal income tax liability figure using a pro forma return in order to determine a federal income tax liability figure to be used as a starting point in computing state income tax under this section.

²³² Section 57-38-30.3 was also amended by section 1 of House Bill No. 1399, chapter 526, section 1 of House Bill No. 1413, chapter 528, section 2 of Senate Bill No. 2252, chapter 522, and section 1 of Senate Bill No. 2386, chapter 527.

- ~~3.~~ 2. The adjusted federal income tax liability for a resident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income taxable to this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator:
 - a. 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. 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. An 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.
- ~~4.~~ 3. The adjusted federal income tax liability of a nonresident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income derived from sources within this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator:
 - a. 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. 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. An 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.
- ~~5.~~ 4. For purposes of this section, "federal income tax liability" means the individual's, estate's, or trust's federal income tax computed for the taxable year under Internal Revenue Code sections 1 and 3, relating to the computation of the regular federal income tax before credits, including calculation and tax rate modifications prescribed under other provisions of the Internal Revenue Code, adjusted as follows:

- a. Add the alternative minimum tax computed under Internal Revenue Code section 55;
- b. Add the tax on a lump sum distribution computed under Internal Revenue Code section 402; however, this adjustment does not apply if the lump sum distribution is received while a nonresident of this state and is exempt from taxation by this state under federal law;
- c. Add the tax on an accumulation distribution of a trust computed under Internal Revenue Code section 667;
- d. Add the tax computed under Internal Revenue Code section 72(m)(5) on excess benefits received from a qualified plan under Internal Revenue Code section 401(a) or a qualified annuity under Internal Revenue Code section 403(a);
- e. Add the tax computed under Internal Revenue Code section 72(q)(1) on an early distribution from an annuity contract;
- f. Add the tax computed under Internal Revenue Code section 72(t)(1) on an early distribution from a qualified retirement plan;
- g. Add the tax computed under Internal Revenue Code section 4973(a) on excess contributions to an individual retirement account, medical savings account, and certain Internal Revenue Code section 403(b) and annuity contracts; however, this adjustment does not apply if the individual, estate, or trust is a nonresident of this state;
- h. Add the tax computed under Internal Revenue Code section 4974(a) on excess accumulations in a qualified retirement plan; however, this adjustment does not apply if the individual, estate, or trust is a nonresident of this state;
- i. Add the tax computed under Internal Revenue Code section 4980A on excess distributions from a qualified retirement plan; and
- j. Subtract the credit for prior year minimum tax computed under Internal Revenue Code section 53.

Unless specifically provided for in this subsection, no federal income tax credit may be subtracted in determining the federal income tax liability for purposes of this section.

- ~~6.~~ 5. A husband and wife 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.
- ~~7.~~ 6. 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 entire adjusted gross income as reported on the taxpayer's federal income tax return.
- ~~8.~~ 7. a. Individuals, estates, or trusts receiving a refund of federal income tax for a year for which an election to file state income tax returns has been made under this section shall file amended state income tax returns reducing the federal income tax liability for the year for which the federal income tax refund is granted and may not report the federal income tax refund in the year received.
- b. Individuals, estates, or trusts assessed additional federal income tax for a year for which an election to file state income tax returns has been made under this section shall file amended state income tax returns increasing the federal income tax liability for the year for which the additional federal income tax is assessed and may not report increased federal income tax liability in the year in which the additional federal income tax is paid.
- ~~9.~~ 8. 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.
- ~~40.~~ 9. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.20.
- ~~44.~~ 10. 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.

SECTION 54. AMENDMENT. Section 57-38-54 of the North Dakota Century Code is amended and reenacted as follows:

57-38-54. Publication of statistics. The tax commissioner shall prepare and publish biennially statistics reasonably available with respect to the operation of this chapter, including amounts collected, classification of taxpayers, and such other facts as are deemed pertinent and valuable. The commissioner shall publish the tax rate imposed under section 57-38-30.3 as a percentage of adjusted federal tax liability and as the corresponding range of marginal tax rates as if the tax were imposed on taxable income.

²³³ **SECTION 55. AMENDMENT.** Subsection 1 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Director" means the director of the department of commerce division of economic development and finance.

SECTION 56. AMENDMENT. Section 57-38.5-08 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-08. Rules and administration. The tax commissioner is charged with administration of this chapter as it relates to an income tax credit and has the same powers as provided under section 57-38-56 for purposes of this chapter. The director is charged with administration of this chapter as it relates to certification of qualified businesses and the ~~director~~ commissioner of commerce may adopt rules for that purpose.

SECTION 57. AMENDMENT. Subsection 6 of section 57-39.2-28 of the North Dakota Century Code is amended and reenacted as follows:

6. Notwithstanding section 57-39.2-23, the commissioner may provide names and addresses of Canadian residents claiming a North Dakota sales tax refund to the director of the department of commerce division of tourism ~~department~~.

SECTION 58. REPEAL. Section 54-34.3-09 of the North Dakota Century Code is repealed.

SECTION 59. LEGISLATIVE COUNCIL CORRECTION OF STATUTORY REFERENCES. The legislative council may replace references to the "department of economic development and finance", "division of community services", "tourism department", and "department of economic development and finance division of finance" with references to the "department of commerce division of economic development and finance", "department of commerce division of community services", "department of commerce division of tourism", "department of commerce division of economic development and finance finance office", "department of commerce", and "commissioner of commerce", or any variation of these terms as appropriate, in any measure enacted by the fifty-seventh legislative assembly.

SECTION 60. APPROPRIATION - TRANSFER. As of the effective date of this Act, the division of community services, department of economic development and finance, and tourism department are abolished and any funds appropriated to these agencies by the fifty-sixth legislative assembly and fifty-seventh legislative assembly are transferred to the department of commerce.

SECTION 61. EFFECTIVE DATE. Sections 52 through 54 of this Act are effective for taxable years beginning after December 31, 2000, and the remainder of this Act becomes effective on August 1, 2001.

Approved April 28, 2001
Filed April 28, 2001

²³³ Section 57-38.5-01 was also amended by section 2 of House Bill No. 1413, chapter 528.

CHAPTER 489

HOUSE BILL NO. 1400

(Representatives Berg, Pietsch, Severson, Tieman)
(Senators Klein, Trenbeath)

RURAL GROWTH INCENTIVE PROGRAM

AN ACT to create and enact a new section to chapter 54-34.3 of the North Dakota Century Code, relating to a rural growth incentive program administered by the department of economic development and finance; and to provide for allocation of the North Dakota development fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-34.3 of the North Dakota Century Code is created and enacted as follows:

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. The department shall designate an applicant city as a rural growth incentive city 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 may be any combination of public and private funds.
2. If the department designates a city as a rural growth incentive city:
 - a. 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. 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, 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. 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 city with training to assist the city in expanding primary sector businesses and working with state economic development programs.

SECTION 2. NORTH DAKOTA DEVELOPMENT FUND ALLOCATIONS. A portion of the amount available in the North Dakota development fund relating to the transfer of regional rural development revolving loan fund moneys may be used for the purpose of providing state loan funds under section 1 of this Act.

Approved April 13, 2001

Filed April 16, 2001

CHAPTER 490**SENATE BILL NO. 2176**

(Appropriations Committee)

(At the request of the Legislative Compensation Commission)

LEGISLATIVE COUNCIL MEMBER COMPENSATION

AN ACT to amend and reenact subsection 1 of section 54-35-10 of the North Dakota Century Code, relating to compensation paid to members of the legislative assembly for attending sessions of the legislative council and its committees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-35-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The members of the council and the members of any committee of the council ~~must~~ are entitled to be compensated for the time spent in attendance at sessions of the council and of its committees at the rate of ~~seventy-five~~ one hundred dollars per day and must also be paid for expenses incurred in attending said meetings and in the performance of their official duties in the amounts provided by law for other state officers.

Approved March 28, 2001

Filed March 28, 2001

CHAPTER 491

HOUSE BILL NO. 1032

(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS MEMBERSHIP

AN ACT to amend and reenact subsection 1 of section 54-35.2-01 of the North Dakota Century Code, relating to the membership of the advisory commission on intergovernmental relations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-35.2-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The advisory commission on intergovernmental relations consists of ~~eleven~~ twelve members:
 - a. The North Dakota league of cities executive committee shall appoint two members of the commission.
 - b. The North Dakota association of counties executive committee shall appoint two members of the commission.
 - c. The North Dakota township officers association executive board of directors shall appoint one member of the commission.
 - d. The North Dakota recreation and park association executive board shall appoint one member of the commission.
 - e. The North Dakota school boards association board of directors shall appoint one member of the commission.
 - f. The governor or the governor's designee is a member of the commission.
- f. g. The legislative council shall appoint four members of the legislative assembly as members of the commission.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 492

HOUSE BILL NO. 1125

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

OMB PURCHASES, BIDDING, AND VENDOR REGISTRATION EXEMPTIONS

AN ACT to amend and reenact subsection 7 of section 54-44.4-02, section 54-44.4-05, and subsections 1 and 4 of section 54-44.4-09 of the North Dakota Century Code, relating to justification for emergency purchases, variations on competitive bidding, and exemptions from vendor registration; and to provide for legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁴ **SECTION 1. AMENDMENT.** Subsection 7 of section 54-44.4-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Emergency purchases the office of management and budget cannot make within the required time and which involve public health or public safety, or where 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.

SECTION 2. AMENDMENT. Section 54-44.4-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.4-05. Competitive ~~bidding~~ on, limited competitive, noncompetitive, and negotiated purchases - Other government purchasing contracts - Exempt records.

1. Except as otherwise provided in ~~section~~ sections 44-08-01 and ~~section~~ 25-16.2-02, and in this section, purchasing contracts must be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability. The office of management and budget may reject any or all bids or negotiate for a lower price with a successful bidder. 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

²³⁴ Section 54-44.4-02 was also amended by section 2 of House Bill No. 1148, chapter 493.

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 bids and proposals received under this chapter are exempt records under subsection 5 of section 44-04-17.1.

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 is available from only one supplier.
 - b. The commodity is available from another governmental entity's contract.
 - c. The commodity is to be purchased for experimentation or trial.
 - d. Competitive bidding has failed to produce a bidder.
 - e. Commodities are being purchased for over-the-counter resale.
 - f. Acceptable goods are produced or provided by correctional institutions or other government agencies.
 - g. The anticipated cost of purchasing specified goods is less than an amount determined by the office of management and budget which would justify the expense of competitive bidding.
 - 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.
3. If the director of the office of management and budget determines it to be in the best interest of the state, the office of management and budget may agree to purchase according to contracts entered into by the United States general services administration, or may enter into cooperative purchasing agreements with a cooperative purchasing group of other state governments.

SECTION 3. AMENDMENT. Subsections 1 and 4 of section 54-44.4-09 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Every person or business entity that desires to bid or submit a proposal on contracts for commodities 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.

4. The director of the office of management and budget, or the director's designee, 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 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; or
 - 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. In the event of a tie bid or proposal, the registered vendor must be given preference.

SECTION 4. LEGISLATIVE INTENT. It is the intent of the fifty-seventh legislative assembly that the office of management and budget in consultation with the attorney general develop standards and guidelines for the procurement of contracts for services and if appropriate, submit proposed legislation to the fifty-eighth legislative assembly regarding those standards and guidelines. State agencies are encouraged to follow the standards and guidelines as set forth by the office of management and budget and develop agency guidelines for procurement of contracts for service.

Approved April 3, 2001
Filed April 3, 2001

CHAPTER 493

HOUSE BILL NO. 1148

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

STATE PURCHASING CARDS

AN ACT to amend and reenact section 44-08-05.1, subsection 8 of section 54-44.4-02, and section 54-44.4-04 of the North Dakota Century Code, relating to approval of vouchers for state purchases made using a purchasing card and required use of purchasing cards for state purchases costing less than a designated amount.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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 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, 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 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 and, if a violation appears to exist ~~he~~, 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.

²³⁵ **SECTION 2. AMENDMENT.** Subsection 8 of section 54-44.4-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. Such specific items or items 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.

SECTION 3. AMENDMENT. Section 54-44.4-04 of the 1999 Supplement to 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 chapter 28-32, rules necessary to administer this chapter. The written directives issued by the director exercising authority provided in subsection 8 of section 54-44.4-02 and section 54-44.4-03 need not be adopted as rules under chapter 28-32.

Approved March 14, 2001
Filed March 15, 2001

²³⁵ Section 54-44.4-02 was also amended by section 1 of House Bill No. 1125, chapter 492.

CHAPTER 494

SENATE BILL NO. 2082

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

PERS SERVICE AND BENEFITS

AN ACT to create and enact a new subsection to section 54-52-17.4 of the North Dakota Century Code, relating to purchase of service credit under the public employees retirement system; to amend and reenact subsection 11 of section 54-52-04, subsections 4 and 6 of section 54-52-17, subsection 4 of section 54-52-17.4, and sections 54-52-17.5, 54-52-17.10, 54-52-26, 54-52.2-03, and 54-52.2-04 of the North Dakota Century Code, relating to funding of administrative expenses of the deferred compensation plan, computation of benefits, determination of normal retirement date, beneficiary designations, cost of credit purchases, postretirement adjustments, prior service retiree adjustments, confidentiality of records, and deferred compensation under the public employees retirement system; to repeal section 54-52-17.9 of the North Dakota Century Code, relating to prior service retiree adjustments under the public employees retirement system; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁶ **SECTION 1. AMENDMENT.** Subsection 11 of section 54-52-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. The board shall fund the administrative expenses of chapter 54-52.2 from funds collected under chapters 54-52, 54-52.1, and 54-52.3 and from fines collected from deferred compensation services providers, subject to appropriation by the legislative assembly.

²³⁷ **SECTION 2. AMENDMENT.** Subsections 4 and 6 of section 54-52-17 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

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:

²³⁶ Section 54-52-04 was also amended by section 1 of House Bill No. 1099, chapter 496.

²³⁷ Section 54-52-17 was also amended by section 1 of Senate Bill No. 2083, chapter 495, section 2 of Senate Bill No. 2083, chapter 495, and section 3 of Senate Bill No. 2083, chapter 495.

- (1) Service benefit equals ~~one and eighty-nine hundredths~~ two percent of final average salary multiplied by the number of years of service employment.
 - (2) Prior service benefit equals ~~one and eighty-nine hundredths~~ two percent of final average salary multiplied by the number of years of prior service employment.
 - (3) ~~All participants who retired before August 1, 1997, are entitled to benefits calculated at one and seventy-seven hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning August 1, 1997.~~
- b. Single life 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, which must be determined as follows:
- (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and 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.
 - (3) A participant who retired before August 1, 1995, is entitled to benefits calculated at two and eighty hundredths percent multiplied by the second ten years of judicial service, with the increased benefits payable beginning August 1, 1995.
- 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. A participant who, on July 31, 1997, is receiving disability retirement benefits that are not based upon the benefit multiplier is entitled to receive an increase in benefits equal to five percent of the individual's present benefit with the increased benefits payable beginning August 1, 1997.

- 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 1 of subdivision a for calculating the service benefit.
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 surviving spouse. However, if there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing, the board shall pay the member's account balance to the member's beneficiary or, if there is no named beneficiary, to the member's estate 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.

SECTION 3. AMENDMENT. Subsection 4 of section 54-52-17.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The member 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. 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 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.

SECTION 4. A new subsection to section 54-52-17.4 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

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.

SECTION 5. AMENDMENT. Section 54-52-17.5 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.5. Postretirement adjustments. An individual or the individual's beneficiary who, on July 31, 4999 2001, is receiving retirement benefits under subdivision a, c, d, or e of subsection 4 of section 54-52-17; ~~or disability retirement benefits under subdivision e of subsection 4 of section 54-52-17~~, is entitled to receive an increase in benefits equal to ~~eight~~ six percent of the individual's present benefits with the increase payable beginning August 1, 4999 2001.

SECTION 6. AMENDMENT. Section 54-52-17.10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.10. Prior service retiree adjustment. Prior service retirees who are receiving benefits under this chapter on July 31, 4999 2001, are entitled to receive an increase in benefits equal to ~~eight~~ six percent of the individual's present benefit, with the increased benefits payable beginning August 1, 4999 2001. A prior service retiree is a former participating employee who receives a supplemental monthly payment from the retirement system based upon the original prior service credit system.

SECTION 7. AMENDMENT. Section 54-52-26 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-26. Confidentiality of records. All records relating to the retirement benefits of a member or a beneficiary under this chapter, chapter 54-52.2, and chapter 54-52.6 are confidential and are not public records. ~~This section does not prohibit any party from obtaining this information from other agencies or governmental sources.~~ Information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the member has given written consent to have the information disclosed.
2. A person legally representing the member, upon proper proof of representation, and unless the 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 54-52-17.6. The information disclosed under this subsection must be limited to information necessary for drafting the order.

SECTION 8. AMENDMENT. Section 54-52.2-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.2-03. Deferred compensation program - Administration - Contract for services. The administration of the deferred compensation program for each state agency, department, board, commission, or institution is under the direction of the public employees retirement board. Each county, city, or other political subdivision shall designate an officer to administer the deferred compensation program or appoint the public employees retirement board to administer the program on its behalf. Payroll reductions must be made in each instance by the appropriate payroll officer. The public employees retirement board shall administer the deferred compensation program based on ~~a plan~~ one or more plans in compliance with the appropriate provisions of the Internal Revenue Code and regulations adopted under those provisions. Not later than January 1, 1999, all plan assets and income must be held in trust, custodial accounts, or contracts as described in section 401(f) of the Internal Revenue Code [26 U.S.C. 401(f)] for the exclusive benefit of participants and their beneficiaries as required by section 457 of the Internal Revenue Code [26 U.S.C. 457]. Once the trust, custodial account, or contract is established as required by this section, the board shall act as fiduciary of the plan to the extent required by section 457 of the Internal Revenue Code [26 U.S.C. 457] and the board is authorized to do all things necessary for the proper administration of the plan to ensure that the plan maintains its qualified status.

SECTION 9. AMENDMENT. Section 54-52.2-04 of the North Dakota Century Code is amended and reenacted as follows:

54-52.2-04. Definition - Employee. For the purpose of this chapter, "employee" means any person, whether appointed, elected, or under contract, ~~providing services for~~ employed by the state, county, city, town, or other a political subdivision, for which compensation is paid who is at least eighteen years of age and employed in an approved and regularly funded position of unlimited duration for twenty hours or more per week and at least five months each year. For purposes of this chapter, "employee" also means a member of the legislative assembly.

SECTION 10. REPEAL. Section 54-52-17.9 of the North Dakota Century Code is repealed.

SECTION 11. EFFECTIVE DATE. Section 4 of this Act becomes effective on the date the board of trustees of the public employees retirement system receives a letter ruling from the internal revenue service that section 4 of this Act does not jeopardize the qualified status of the public employees retirement system. The board shall notify the legislative council of the effective date of section 4 of this Act.

CHAPTER 495

SENATE BILL NO. 2083

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

JUDGES RETIREMENT BENEFITS

AN ACT to amend and reenact subdivision e of subsection 3 of section 54-52-17, subdivision b of subsection 4 of section 54-52-17, subsection 9 of section 54-52-17, and section 54-52-17.11 of the North Dakota Century Code, relating to disability retirement, normal retirement benefits, retirement benefit options, and postretirement adjustments for supreme and district court judges under the public employees retirement system; and to repeal section 54-52-17.12 of the North Dakota Century Code, relating to postretirement adjustments for supreme and district court judges under the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁸ **SECTION 1. AMENDMENT.** Subdivision e of subsection 3 of section 54-52-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 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

²³⁸ Section 54-52-17 was also amended by section 2 of Senate Bill No. 2082, chapter 494, section 2 of Senate Bill No. 2083, chapter 495, and section 3 of Senate Bill No. 2083, chapter 495.

eligibility definition, the board may discontinue the disability retirement benefit. The board is ~~authorized to~~ may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are ~~hereby~~ appropriated from the retirement fund for those purposes.

²³⁹ **SECTION 2. AMENDMENT.** Subdivision b of subsection 4 of section 54-52-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. ~~Single life~~ 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, ~~which must be~~ determined as follows:
- (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and 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.
 - ~~(3) A participant who retired before August 1, 1995, is entitled to benefits calculated at two and eighty hundredths percent multiplied by the second ten years of judicial service, with the increased benefits payable beginning August 1, 1995.~~

²⁴⁰ **SECTION 3. AMENDMENT.** Subsection 9 of section 54-52-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. The board shall ~~promulgate regulations~~ adopt rules providing for the receipt of retirement benefits in the following optional forms:
 - a. ~~Joint~~ Single life.
 - b. An actuarially equivalent joint and survivor option, with fifty percent or one hundred percent options.

²³⁹ Section 54-52-17 was also amended by section 2 of Senate Bill No. 2082, chapter 494, section 1 of Senate Bill No. 2083, chapter 495, and section 3 of Senate Bill No. 2083, chapter 495.

²⁴⁰ Section 54-52-17 was also amended by section 2 of Senate Bill No. 2082, chapter 494, section 1 of Senate Bill No. 2083, chapter 495, and section 2 of Senate Bill No. 2083, chapter 495.

- b. ~~c.~~ Level An actuarially equivalent level social security option, which ~~shall be~~ is available only to ~~early retirees~~ members who retire prior to attaining the age at which they may begin to receive unreduced social security benefits.
- e. ~~d.~~ Life with five-year or ten-year certain options.

~~Unless~~ 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.

SECTION 4. AMENDMENT. Section 54-52-17.11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52-17.11. Judges postretirement adjustments. A supreme or district court judge or that person's beneficiary who, on December 31, ~~1997~~ 2001, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, ~~1998~~ 2002. A supreme or district court judge or that person's beneficiary who, on December 31, ~~1998~~ 2002, is receiving retirement benefits under subdivision b of subsection 4 of section 54-52-17 is entitled to receive an increase in benefits equal to two percent of the individual's present benefits with the increase payable beginning January 1, ~~1999~~ 2003.

SECTION 5. REPEAL. Section 54-52-17.12 of the North Dakota Century Code is repealed.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 496

HOUSE BILL NO. 1099

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

PERS HEALTH INSURANCE DEFINITIONS AND ELIGIBILITY

AN ACT to create and enact a new subsection to section 54-52-04 of the North Dakota Century Code, relating to state retirement board authority over excess uniform group insurance program funds; to amend and reenact subsection 4 of section 54-52.1-01, subsection 3 of section 54-52.1-03, and sections 54-52.1-03.3, 54-52.1-06, and 54-52.1-11 of the North Dakota Century Code, relating to the definition of eligible employee, retiree eligibility for the group health insurance program and retiree health benefits, and excess funds and confidentiality of records under the uniform group insurance program; and to provide a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴¹ **SECTION 1.** A new subsection to section 54-52-04 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

The board may use any amount credited to the separate uniform group insurance program fund created by section 54-52.1-06 in excess of the costs of administration of the uniform group insurance program to reduce the amount of premium amounts paid monthly by enrolled members of the uniform group insurance program, to reduce any increase in premium amounts paid monthly by enrolled members, or to provide increased insurance coverage to the members, as the board may determine.

SECTION 2. AMENDMENT. Subsection 4 of section 54-52.1-01 of the 1999 Supplement to 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

²⁴¹ Section 54-52-04 was also amended by section 1 of Senate Bill No. 2082, chapter 494.

is employed at least seventeen and one-half hours per week and at least five months each year. 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 3. AMENDMENT. Subsection 3 of section 54-52.1-03 of the 1999 Supplement to 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 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.

SECTION 4. AMENDMENT. Section 54-52.1-03.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.1-03.3. Eligibility for retiree health benefits - Fixed contribution and reduction factors.

1. The following persons are entitled to receive credit for hospital and medical benefits coverage under subsection 2:
 - a. A member of the highway patrolmen's retirement system receiving retirement benefits, or the surviving spouse of a member of the highway patrolmen's retirement system who was eligible to receive or was receiving retirement benefits, under section 39-03.1-11.
 - b. A member 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.
 - c. A member of the retirement program established by job service North Dakota under section 52-11-01 receiving retirement benefits, or the surviving spouse of a member of that retirement program who was eligible to receive or was receiving retirement benefits, under the plan provisions of that retirement program.

- d. A retired judge receiving retirement benefits under the retirement program established under chapter 27-17, or the surviving spouse of a retired judge who was eligible to receive or was receiving retirement benefits, under section 27-17-01.
 - e. A former participating member of the defined contribution retirement plan is eligible as determined by the board pursuant to its rules.
2. The board shall calculate the allowable monthly credit toward hospital and medical benefits coverage for a person eligible under subsection 1 in an amount equal to four dollars and fifty cents multiplied by the member's or deceased member's number of years of credited service under the highway patrolmen's retirement system, the public employees retirement system, the retirement program established by job service North Dakota under section 52-11-01, or the judges retirement program established under chapter 27-17. For a member of the public employees retirement system receiving an early retirement benefit or the surviving spouse of that member, or a former participating member of the defined contribution retirement plan who is receiving a periodic distribution and would not meet the normal retirement provisions of the public employees retirement system, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of sixty-four. For a member of the highway patrolmen's retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of fifty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of fifty-four. For a member of the retirement program established by job service North Dakota under section 52-11-01 receiving an early retirement benefit or a discontinued service annuity under the plan provisions of that retirement program or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent applies for each year the member terminates employment prior to attaining the age of sixty-four.
 3. The board shall apply the credit allowable under subsection 2 to the payment of monthly premiums required of each person eligible under subsection 1 for hospital benefits coverage and medical benefits coverage under the uniform group insurance program. However, if the allowable credit exceeds the monthly premium in effect for selected coverage, that amount of the credit which exceeds the premium is forfeited and may not be used for any other purpose.
 4. The board may, as an alternative to the calculation of the allowable monthly credit under subsection 2, provide actuarially reduced benefit options for the member and the member's surviving spouse including a one hundred percent joint and survivor option, a fifty percent joint and survivor option, or a five-year or ten-year certain option.

SECTION 5. AMENDMENT. Section 54-52.1-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52.1-06. State contribution. Each department, board, or agency shall pay to the board each month from its funds appropriated for payroll and salary amounts a state contribution in the amount as determined by the primary carrier of the group contract for the full single rate monthly premium for each of its eligible employees enrolled in the uniform group insurance program and the full rate monthly premium, in an amount equal to that contributed under the alternate family contract, including major medical coverage, for hospital and medical benefits coverage for spouses and dependent children of its eligible employees enrolled in the uniform group insurance program pursuant to section 54-52.1-07. The board shall then pay the necessary and proper premium amount for the uniform group insurance program to the proper carrier or carriers on a monthly basis. Any refund, rebate, dividend, experience rating allowance, discount, or other reduction of premium amount must be credited at least annually to a separate fund of the uniform group insurance program to be used by the board to reimburse the administrative expense and benefit fund of the public employees retirement program for the costs of administration of the uniform group insurance program. ~~Any amount credited to the separate fund in excess of the costs of administration of the program must be held in the separate fund to be used by the board to reduce the amount of premium amounts paid monthly by enrolled eligible employees, to reduce any increase in premium amounts paid monthly by enrolled eligible employees or to provide increased insurance coverage, as the board may determine.~~ In the event an enrolled eligible employee is not entitled to receive salary, wages, or other compensation for a particular calendar month, ~~he~~ that employee may make direct payment of the required premium to the board to continue ~~his~~ the employee's coverage, and the employing department, board, or agency shall provide for the giving of a timely notice to the employee of ~~his~~ that person's right to make such payment at the time ~~such~~ the right arises.

SECTION 6. AMENDMENT. Section 54-52.1-11 of the North Dakota Century Code is amended and reenacted as follows:

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 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.
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 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.

SECTION 7. TRANSFER BETWEEN UNIFORM GROUP INSURANCE PROGRAM FUNDS. For the biennium beginning July 1, 2001, and ending June 30, 2003, the executive director of the public employees retirement system shall transfer \$475,000 from the public employee life insurance program fund to the uniform group health insurance program fund for the purpose of increasing the health insurance reserve.

Approved April 24, 2001

Filed April 24, 2001

CHAPTER 497

HOUSE BILL NO. 1449

(Representatives Kasper, Keiser, M. Klein)
(Senators Lee, D. Mathern, Mutch)

PRETAX BENEFITS PROGRAM PARTICIPATION

AN ACT to amend and reenact section 54-52.3-01 of the North Dakota Century Code, relating to participation by members of the legislative assembly in the pretax benefits program; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.3-01. Pretax benefits program for public employees. The public employees retirement system board may establish a pretax benefits program for all state employees and employees of district health units, including members of the legislative assembly, under which an employee may reduce the employee's salary and elect benefits to the extent of the reduction. A participating district health unit shall comply with the program conditions and pay all fees established by the board.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 2002.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 498

HOUSE BILL NO. 1100

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

DEFINED CONTRIBUTION PLAN PARTICIPATION AND DISABILITY BENEFITS

AN ACT to create and enact a new section to chapter 54-52.6 of the North Dakota Century Code, relating to the acceptance of rollover contributions under the defined contribution retirement plan; and to amend and reenact sections 54-52.6-02, 54-52.6-03, 54-52.6-13, and 54-52.6-14 of the North Dakota Century Code, relating to participation, calculation of interest on transferred amounts, distribution options, and disability benefits under the defined contribution retirement plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴² **SECTION 1. AMENDMENT.** Section 54-52.6-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.6-02. Election.

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on December 31, 1999, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on the effective date of this Act and ending 12:01 a.m. January 1, 2000. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, 1999; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, 2000; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, 1999. This section does not affect a person's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after December 31, 1999, may make an election to participate in the defined contribution retirement plan

²⁴² Section 54-52.6-02 was also amended by section 1 of House Bill No. 1216, chapter 499.

established under this chapter at any time during the first six months after the date of employment to participate in the defined contribution retirement plan established under this chapter. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window.

2. If an individual who is a deferred member of the public employees retirement system on December 31, 1999, is reemployed and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's reemployment and ending upon the expiration of ~~sixty days~~ six months after the date of that reemployment. If the board, in its sole discretion, determines that the employee was not adequately notified of the employee's option to participate in the defined contribution retirement plan, the board may provide the employee a reasonable time within which to make that election, which may extend beyond the original six-month decision window. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.
3. An eligible employee who elects to participate in the retirement plan established under this chapter must remain a participant even if that employee returns to the classified service or becomes employed by a political subdivision that participates in the public employees retirement system. The contribution amount must be as provided in this chapter, regardless of the position in which the employee is employed. Notwithstanding the irrevocability provisions of this chapter, if a member who elects to participate in the retirement plan established under this chapter becomes a supreme or district court judge, becomes a member

of the highway patrol, becomes employed in a position subject to teachers' fund for retirement membership, or becomes an employee of the board of higher education or state institution under the jurisdiction of the board who is eligible to participate in an alternative retirement program established under subsection 13 of section 15-10-17, the member's status as a member of the defined contribution retirement plan is suspended, and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution plan, the member's suspension must be terminated, the member again becomes a member of the defined contribution retirement plan, and the member's account resumes accepting contributions. At the member's option, and pursuant to rules adopted by the board, the member may transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account under this chapter.

4. After consultation with its actuary, the board shall determine the method by which a participating member or deferred member may make a written election under this section. If the participating member or deferred member is married at the time of the election, the election is not effective unless the election is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.
5. If the board receives notification from the internal revenue service that this section or any portion of this section will cause the public employees retirement system or the retirement plan established under this chapter to be disqualified for tax purposes under the Internal Revenue Code, then the portion that will cause the disqualification does not apply.

²⁴³ **SECTION 2. AMENDMENT.** Section 54-52.6-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.6-03. Transfer of accumulated fund balances. For an individual who elects to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment prior to receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be

²⁴³ Section 54-52.6-03 was also amended by section 2 of House Bill No. 1216, chapter 499.

transferred for employees electing to transfer prior to January 1, 2000, using the two following formulas, and shall transfer the greater of the two amounts obtained:

1. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, 2000, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or
2. The actual employer ~~and employee contributions~~ contribution made pursuant to ~~sections 54-52-05 and 54-52-06,~~ less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election plus the employee account balance.

The board shall calculate the amount to be transferred for persons employed after December 31, 1999, using only the formula contained in subsection 2.

SECTION 3. A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

Acceptance of rollovers. The plan may allow a participating member to transfer or rollover funds from other qualified plans into the member's account under rules adopted by the board.

SECTION 4. AMENDMENT. Section 54-52.6-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.6-13. Distributions.

1. A participating member is eligible to receive distribution of that person's accumulated balance in the plan upon becoming a former participating member.
2. Upon the death of a participating member or former participating member, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the board, the board, in a lump sum distribution, shall distribute the accumulated balance to a legal representative, if any, of the deceased participant or, if there is no legal representative, to the deceased participant's estate.
3. A ~~deferred~~ former participating member or refund beneficiary may elect one or a combination of several of the following methods of distribution of the accumulated balance:
 - a. A lump sum distribution to the recipient.
 - b. A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.
 - c. Periodic distributions, as authorized by the board.

- d. No current distribution, in which case the accumulated balance must remain in the plan until the ~~deferred~~ former participating member or refund beneficiary elects a method or methods of distribution under this section, to the extent allowed by federal law.
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 days after termination, requesting that the member's vested account balance remain in the plan.

SECTION 5. AMENDMENT. Section 54-52.6-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.6-14. Disability benefits. The board shall provide a procedure whereby a participating member may use a portion of that person's account contributions under this chapter to purchase disability insurance allow distribution of the participating member's vested account balance if the board determines that the participating member has become totally and permanently disabled. If approved, the disabled member has the same distribution options as provided in subdivisions a and c of subsection 3 of section 54-52.6-13. However, if the member chooses the periodic distribution option, the member may only receive distributions for as long as the 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 shall discontinue the disability retirement benefit.

Approved April 3, 2001
Filed April 3, 2001

CHAPTER 499

HOUSE BILL NO. 1216

(Representatives Wald, Grande)
(Senators Krebsbach, Wardner)

DEFINED CONTRIBUTION PLAN PARTICIPATION

AN ACT to amend and reenact subsections 1 and 2 of section 54-52.6-02 and section 54-52.6-03 of the North Dakota Century Code, relating to participation in the defined contribution retirement plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁴ **SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 54-52.6-02 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The board shall provide an opportunity for each eligible employee who is a member of the public employees retirement system on ~~December 31, 1999~~ September 30, 2001, and who has not made a written election under this section to transfer to the defined contribution retirement plan before October 1, 2001, to elect in writing to terminate membership in the public employees retirement system and elect to become a participating member under this chapter. Except as provided in section 54-52.6-03, an election made by an eligible employee under this section is irrevocable. The board shall accept written elections under this section from eligible employees during the period beginning on the effective date of this Act and ending 12:01 a.m. ~~January 1, 2000~~ December 14, 2001. An eligible employee who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. An eligible employee who makes and files a written election under this section ceases to be a member of the public employees retirement system effective twelve midnight December 31, ~~1999~~ 2001; becomes a participating member in the defined contribution retirement plan under this chapter effective 12:01 a.m. January 1, ~~2000~~ 2002; and waives all of that person's rights to a pension, annuity, retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective December 31, ~~1999~~ 2001. This section does not affect a person's right to health benefits or retiree health benefits under chapter 54-52.1. An eligible employee who is first employed and entered upon the payroll of that person's employer after ~~December 31, 1999~~ September 30, 2001, may make an election at any time during the first six months after the date of employment to participate in the defined contribution retirement plan established under this chapter.

²⁴⁴ Section 54-52.6-02 was also amended by section 1 of House Bill No. 1100, chapter 498.

2. If an individual who is a deferred member of the public employees retirement system on ~~December 31, 1999~~ September 30, 2001, is reemployed and by virtue of that employment is again eligible for membership in the public employees retirement system under chapter 54-52, the individual may elect in writing to remain a member of the public employees retirement system or if eligible to participate in the defined contribution retirement plan established under this chapter to terminate membership in the public employees retirement system and become a participating member in the defined contribution retirement plan established under this chapter. An election made by a deferred member under this section is irrevocable. The board shall accept written elections under this section from a deferred member during the period beginning on the date of the individual's reemployment and ending upon the expiration of sixty days after the date of that reemployment. A deferred member who makes and files a written election to remain a member of the public employees retirement system retains all rights and is subject to all conditions as a member of that retirement system. A deferred member who does not make a written election or who does not file the election during the period specified in this section continues to be a member of the public employees retirement system. A deferred member who makes and files a written election to terminate membership in the public employees retirement system ceases to be a member of the public employees retirement system effective on the last day of the payroll period that includes the date of the election; becomes a participating member in the defined contribution retirement plan under this chapter effective the first day of the payroll immediately following the date of the election; and waives all of that person's rights to a pension, an annuity, a retirement allowance, insurance benefit, or any other benefit under the public employees retirement system effective the last day of the payroll that includes the date of the election. This section does not affect any right to health benefits or retiree health benefits to which the deferred member may otherwise be entitled.

²⁴⁵ **SECTION 2. AMENDMENT.** Section 54-52.6-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-52.6-03. Transfer of accumulated fund balances. For an individual who elects to terminate membership in the public employees retirement system under chapter 54-52, the board shall transfer a lump sum amount from the retirement fund to the participating member's account in the defined contribution retirement plan under this chapter. However, if the individual terminates employment prior to receiving the lump sum transfer under this section, the election made under section 54-52.6-02 is ineffective and the individual remains a member of the public employees retirement system under chapter 54-52 and retains all the rights and benefits provided under that chapter. The board shall calculate the amount to be transferred for ~~employees electing to transfer prior to January 1, 2000~~ persons employed before October 1, 2001, using the two following formulas, and shall transfer the greater of the two amounts obtained:

²⁴⁵ Section 54-52.6-03 was also amended by section 2 of House Bill No. 1100, chapter 498.

1. The actuarial present value of the individual's accumulated benefit obligation under the public employees retirement system based on the assumption that the individual will retire under the earliest applicable normal retirement age, plus interest from January 1, ~~2000~~ 2001, to the date of transfer, at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election; or
2. The actual employer ~~and employee~~ contributions made ~~pursuant to sections 54-52-05 and 54-52-06~~, less vested employer contributions pursuant to section 54-52-11.1, plus interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election and the employee account balance.

The board shall calculate the amount to be transferred for persons employed after ~~December 31, 1999~~ September 30, 2001, using only the formula contained in subsection 2.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 500

SENATE BILL NO. 2043 (Legislative Council) (Information Technology Committee)

INFORMATION TECHNOLOGY COMMITTEE AND DEPARTMENT POWERS AND DUTIES

AN ACT to create and enact a new section to chapter 54-59 of the North Dakota Century Code, relating to the preparation of an information technology department annual report; to amend and reenact section 54-35-15.2, subsection 4 of section 54-59-05, and sections 54-59-06, 54-59-07, 54-59-11, and 54-59-16 of the North Dakota Century Code, relating to powers, duties, and responsibilities of the information technology committee and the information technology department; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-15.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-35-15.2. Information technology committee - Powers and duties. The information technology committee has continuing existence and may meet and conduct its business during the legislative session and in the interim between sessions. The committee shall:

1. Meet at least once each calendar quarter.
2. Receive a report from the chief information officer of the state at each meeting.
3. Review the business plan of the information technology department.
4. Address macro-level questions relating to the information technology department.
5. Review the activities of the information technology department.
6. Review statewide information technology standards.
7. Review the statewide information technology plan.
8. Conduct studies of information technology efficiency and security.
9. Make recommendations regarding established or proposed information technology programs and information technology acquisition by the executive and judicial branches.
10. ~~Review~~ Except as provided in subsection 11, review the cost-benefit analysis of any major information technology project of an executive or judicial branch agency. A major project is a project with a cost of two

hundred fifty thousand dollars or more in one biennium or a total cost of five hundred thousand dollars or more.

11. Review the cost-benefit analysis of any major project of the state board of higher education or any institution under the control of the state board of higher education if the project:
 - a. Significantly impacts the statewide wide area network, including the campus access routers;
 - b. Impacts the statewide library system; or
 - c. Is an administrative project. An administrative project is a project that directly collects, aggregates, modifies, stores, or reports institutional student, financial, or human resources records or data and is provided primarily for administrative purposes.
12. Perform periodic reviews to ensure that a major information technology project is on its projected schedule and within its cost projections.

SECTION 2. AMENDMENT. Subsection 4 of section 54-59-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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. 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.

SECTION 3. AMENDMENT. Section 54-59-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-59-06. Business plan. The department shall develop and maintain a business plan. The business plan must:

1. Define the department's overall organization, mission, and delivery of services.
2. Define the strategies for improving personnel productivity and workflow processes of the department department's short-term and long-term goals and objectives based on customer needs.
3. ~~Determine how use of the statewide network will improve learning in the state.~~ Outline the strategies and activities necessary to meet the goals and objectives of the department while improving the efficiency of the department and improving service to customers.
4. ~~Determine how the statewide networks can provide network services for the benefit of Indian tribes, nonprofit organizations, and noncommercial public television stations licensed by the federal communications commission to operate in this state.~~ Define rates and funding mechanisms necessary to finance the proposed activities of the department.
5. Define a method for evaluating progress toward the goals outlined in the business plan.
- ~~6.~~ Determine the specific strategies and processes to ensure that agencies share information, systems, and the statewide network.
- ~~6.~~ Define the processes that will ensure that counties, cities, and school districts receive maximum benefit of the statewide network.
- ~~7.~~ Define a fair and equitable billing structure that provides for payback of the initial investments and ongoing operations of the statewide network.
8. 7. Address the processes that will be put in place to ensure that the department exercises its powers and duties with minimal delay, cost, and procedural burden to an entity receiving services from the department; to ensure that the department provides prompt, high-quality services to an entity receiving services from the department; to ensure that an entity receiving services from the department is aware of the technology available and to ensure training on its use; and to foster information technology innovation by state entities.
- ~~9.~~ Address the deployment of encryption and the administration of digital signatures.
- ~~10.~~ Address information and system backup and disaster recovery.

SECTION 4. AMENDMENT. If Senate Bill No. 2251 does not become effective, section 54-59-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-59-07. Statewide wide area network State information technology advisory committee. The ~~statewide wide area network~~ state information technology advisory committee consists of the chief information officer or the officer's

designee, who is a nonvoting member; the ~~state court administrator~~ director of the department of economic development and finance or the administrator's director's designee; ~~with the approval of the chief justice of the supreme court~~; 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 telecommunications council or a designee; and ~~nine~~ eight members appointed by the governor. ~~The governor shall appoint two members representing state agencies, one member representing a county, one member representing a city, two members representing elementary or secondary education, one member representing noncommercial public television stations licensed by the federal communications commission to operate in this state, and two members from private industry who are knowledgeable in the deployment of major technology projects. The governor's appointees from private industry serve two-year terms, and other appointees of the governor serve at the pleasure of the governor. The governor shall designate the chairman of the committee. 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 of the committee 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 with respect to planning and implementation of wide area network services provided by the department regarding statewide information technology planning, including providing electronic government services for citizens and businesses, developing technology infrastructure to support economic development and work force training, and developing other statewide information technology initiatives and policy.~~

SECTION 5. AMENDMENT. If Senate Bill No. 2251 becomes effective, section 54-59-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-59-07. Statewide wide area network State information technology advisory committee. ~~The statewide wide area network state information technology advisory committee consists of the chief information officer or the officer's designee, who is a nonvoting member; the state court administrator~~ director of the department of economic development and finance or the administrator's director's designee; ~~with the approval of the chief justice of the supreme court~~; 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 ~~nine~~ eight members appointed by the governor. ~~The governor shall appoint two members representing state agencies, one member representing a county, one member representing a city, two members representing elementary and secondary education, one member representing noncommercial public television stations licensed by the federal communications commission to operate in this state, and two members from private industry who are knowledgeable in the deployment of major technology projects. The governor's appointees from private industry serve two-year terms, and other appointees of the governor serve at the pleasure of the governor. The governor shall designate the chairman of the committee. 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 of the committee 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 with respect to planning and implementation of wide area network services provided by 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 statewide information technology initiatives and policy.

SECTION 6. AMENDMENT. Section 54-59-11 of the 1999 Supplement to 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 ~~January~~ March 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 ~~a list of~~ 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 ~~January~~ March 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. ~~Any state agency or institution, county, city, school district, or other entity that uses the statewide network or is a user of services of the department shall file a plan that includes and identifies all requirements for voice, data, or video.~~

SECTION 7. AMENDMENT. Section 54-59-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-59-16. Confidentiality. The department may receive from various agencies and various agencies may provide to the department any information from the agencies necessary to effect the purposes of this chapter without regard to the confidential nature of the information. Each agency shall notify the department regarding the confidential nature of any information submitted to the department. The department is subject to the same restrictions and penalties regarding the dissemination of this information as the entity involved. Except for a request for access authorized by section 54-10-22.1 or a request to access information collected

to carry out section 54-59-09, 54-59-11, or 54-59-13, the department shall refer a request for access to or inspection of information provided by an agency to that agency for response. Referral to the agency satisfies any responsibility of the department to provide that information under open records requirements. Upon court order the department shall provide access to or inspection of this information in accordance with restrictions of that entity involved governing dissemination of that information.

SECTION 8. A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

Information technology department annual report. The department shall prepare and present an annual report to the information technology committee. In addition to the presentation of the annual report to the information technology committee, the department shall present a summary of the annual report to the budget section and to the legislative audit and fiscal review committee. The report must contain:

1. A list of major projects started, ongoing, and completed during the year including related budgeted and actual costs and the estimated implementation date for each project as well as the actual implementation date for completed projects.
2. A list of all projects for which financing agreements have been executed.
3. Information regarding evaluations of cost-benefit analyses for completed projects.
4. A comparison of the department's rates charged for services compared to rates charged for comparable services in other states and in the private sector.
5. Information regarding the information technology plans including the department's plan review process, the number of plans reviewed, and the number of plans approved.
6. A description of the benefits to the state resulting from its investment in information technology.

SECTION 9. LEGISLATIVE INTENT - PERFORMANCE MEASURES. It is the intent of the legislative assembly that the information technology department develop performance measures to assist the legislative assembly in determining the effectiveness and efficiency of the department's operations during the biennium beginning July 1, 2001, and ending June 30, 2003. Each performance measure must include a benchmark for targeted department performance based on national, other states, or private sector performance. The department shall report to the information technology committee, the budget section, and the legislative audit and fiscal review committee during the 2001-02 interim on the performance measures developed.

Approved May 1, 2001
Filed May 2, 2001

CHAPTER 501

SENATE BILL NO. 2251

(Senators Robinson, Solberg, Wardner)
(Representatives Ekstrom, Lemieux, B. Thoreson)

EDUCATIONAL TECHNOLOGY COUNCIL

AN ACT to create and enact two new sections to chapter 54-59 of the North Dakota Century Code, relating to the establishment, powers, and duties of an educational technology council; to amend and reenact sections 15-19-02 and 15-19-06, subsection 1 of section 15.1-02-07, subdivision h of subsection 2 of section 28-32-01, and subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to the administration of the division of independent study and the appointment of members of the educational telecommunications council; to repeal chapter 15.1-05 of the North Dakota Century Code, relating to the educational telecommunications council; to provide for a transfer of funds; and to provide for reports to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 ~~superintendent of public instruction~~ educational technology council. The educational technology council shall hire a state director of the division of independent study must be appointed by the superintendent of public instruction who must be classified under the state personnel merit system. The director, ~~under the supervision of the superintendent of public instruction~~ 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. ~~The board shall determine the director's qualifications and fix his compensation within limits of legislative appropriations. The director is responsible to and must carry out all policies and directives of the state board of public school education in the administration of the program of the division of independent study.~~

SECTION 2. 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 ~~such the~~ the special operating fund. All expenditures from ~~such the~~ the fund must be within the limits of legislative appropriations and must be made upon vouchers, signed and approved by the ~~superintendent of public instruction~~ technology director appointed by the educational technology

council. Upon approval of ~~such~~ 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 ~~such~~ the special operating fund whenever its balance falls so low as to require supplementation.

2. The ~~superintendent of public instruction~~ 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 ~~superintendent of public instruction~~ educational technology council. The director shall submit a full, minute, and itemized statement of every expenditure made during the month to the ~~superintendent of public instruction~~ council in accordance with the rules adopted by the ~~superintendent of public instruction~~ council, and thereafter the ~~superintendent of public instruction~~ council may periodically authorize additional transfers to the administrative operational fund, but the balance in ~~such~~ the fund may never exceed ten thousand dollars, and any unencumbered balance ~~therein~~ 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 ~~superintendent of public instruction~~ council shall determine the amount of the bond to be posted by the director.
3. The state board of public school education may establish a scholarship fund to provide financial grants to students enrolled in courses offered through the division of independent study. The scholarship fund may consist only of those funds specifically appropriated by the legislative assembly and property received by the board or the division of independent study as a gift, devise, or bequest. Any gift, devise, or bequest of property received by the board or division of independent study which is designated by the board and donor for the scholarship fund 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. The interest earned by the scholarship fund is ~~hereby~~ appropriated to the division of independent study.
4. ~~Repealed by S.L. 1989, ch. 199, § 4.~~

SECTION 3. AMENDMENT. Subsection 1 of section 15.1-02-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The superintendent of public instruction may lease surplus portions of real property, including buildings and improvements, owned by the state and administered by the superintendent of public instruction at the school for the blind; and the school for the deaf; ~~and the division of independent study.~~

²⁴⁶ **SECTION 4. AMENDMENT.** Subdivision h of subsection 2 of section 28-32-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- h. The educational ~~telecommunications~~ technology council.

²⁴⁷ **SECTION 5. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09-02.1, 12-55.1-02, 12-59-01, 15-38-17, 15-39.1-05.1, 15.1-01-01, ~~45.1-05-02~~, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
 - a. The aeronautics commission.
 - b. The milk marketing board.
 - c. The dairy promotion commission.
 - d. The state banking board.
 - e. The state credit union board.
 - f. The advisory board of directors to the Bank of North Dakota.
 - g. The pardon advisory board.
 - h. The state parole board.
 - i. The state board of public school education.
 - j. The education standards and practices board and the administrator's professional practices board.
 - k. The board of trustees for the teachers' fund for retirement.
 - l. ~~The educational telecommunications council.~~
 - m. The state game and fish advisory board.

²⁴⁶ Section 28-32-01 was created by section 12 of House Bill No. 1030, chapter 293, and amended by section 18 of Senate Bill No. 3032, chapter 488, and section 2 of Senate Bill No. 2446, chapter 140.

²⁴⁷ Section 54-07-01.2 was also amended by section 29 of House Bill No. 1046, chapter 161, and section 13 of Senate Bill No. 2424, chapter 503.

- ~~m.~~ m. The health council.
- ~~n.~~ n. The air pollution control advisory council.
- ~~o.~~ o. The board of animal health.
- ~~p.~~ p. The administrative committee on veterans' affairs.
- ~~q.~~ q. The committee on aging.
- ~~r.~~ r. The committee on employment of people with disabilities.
- ~~s.~~ s. The commission on the status of women.
- ~~t.~~ t. The North Dakota council on the arts.
- ~~u.~~ u. The state historical board.
- ~~v.~~ v. The Yellowstone-Missouri-Fort Union commission.
- ~~w.~~ w. The state water commission.
- ~~x.~~ x. The state water pollution control board.

SECTION 6. A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

Educational technology council - Meetings - Compensation.

1. The educational technology council is responsible for coordinating educational technology initiatives for elementary and secondary education.
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.

SECTION 8. REPEAL. Chapter 15.1-05 of the North Dakota Century Code is repealed.

SECTION 9. TRANSFER OF FUNDS. Any funds appropriated by the fifty-seventh legislative assembly to or for the purposes of the division of independent study, SENDIT technology services, and the center for innovation in instruction must be transferred to the information technology department for use by the educational technology council on the effective date of this Act.

SECTION 10. SUPERINTENDENT OF PUBLIC INSTRUCTION TO REPORT TO LEGISLATIVE COUNCIL. During the 2001-03 biennium, the superintendent of public instruction shall vigorously pursue grant funds for projects and initiatives relating to the use of technology in elementary and secondary education. The superintendent of public instruction shall report to the legislative council, when requested by the legislative council, at least once every five months during the 2001-02 interim.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 502

SENATE BILL NO. 2212

(Senators Dever, Kringstad, Stenehjem)
(Representatives Dosch, Keiser, Weiler)

BURLEIGH COUNTY LAND SALE

AN ACT to amend and reenact section 1 of chapter 648 of the 1989 Session Laws and section 1 of chapter 562 of the 1991 Session Laws, relating to the sale of state land to Burleigh County.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1 of chapter 648 of the 1989 Session Laws is amended and reenacted as follows:

SECTION 1. Sale of land - Proceeds. The director of institutions is authorized to sell and convey the following property to Burleigh County, North Dakota:

A tract of land approximately three hundred twelve acres, lying in section one, township one hundred thirty-eight, range eighty west, Burleigh County, North Dakota.

The property must be sold at not less than fair market value, based upon two independent appraisals. The state shall reserve all mineral rights now held by the state in and under the premises. Sections 54-01-05.2, 54-01-05.5, and 54-21-26.1 do not apply to the sale authorized by this Act. The proceeds realized from the sale authorized by this Act must be deposited in the North Dakota state penitentiary land fund. ~~The property sold under the authority of this Act must be used for fairgrounds.~~

SECTION 2. AMENDMENT. Section 1 of chapter 562 of the 1991 Session Laws is amended and reenacted as follows:

SECTION 1. Sale of land - Proceeds. The director of institutions may sell and convey the following property to Burleigh County, North Dakota ~~for use as fairgrounds:~~

All that part of the southeast quarter of section 2, township 138 north, range 80 west of the fifth principal meridian, Burleigh County, North Dakota that lies southeasterly of the Bismarck Expressway right of way and north of old-old highway 10 and its connection with Bismarck Expressway, containing 52.74 acres, more or less.

If as a result of passage of Senate Bill No. 2245 by the fifty-second legislative assembly the office of the director of institutions ceases to exist, the office of management and budget shall perform the powers and duties of the director of institutions under this Act.

The property must be sold at not less than fair market value, based upon a current independent appraisal. The state must reserve all mineral rights now held by the state in and under the premises. Sections 54-01-05.2 and 54-01-05.5 do not apply to the sale authorized by this Act. The proceeds realized from the sale

authorized by this Act must be deposited in the North Dakota state penitentiary land fund. ~~The property sold under the authority of this Act must be used for fairgrounds.~~

The commissioner of university and school lands or the commissioner's designee shall provide technical assistance and advice to the director of institutions in any transaction under this Act. The attorney general shall review and approve as to form and legality all legal documents, papers, and instruments required by any transaction under this Act.

Approved March 21, 2001

Filed March 21, 2001

STATE HISTORICAL SOCIETY AND STATE PARKS

CHAPTER 503

SENATE BILL NO. 2424

(Senators Wardner, Robinson, Solberg)

(Representatives Clark, Lemieux, Wald)

STATE HISTORICAL SOCIETY

AN ACT to create and enact two new sections to chapter 55-01 of the North Dakota Century Code, relating to the state historical society; to amend and reenact sections 1-08-04.1 and 11-11-53, subsection 7 of section 23-06-27, section 38-14.1-10, subdivision u of subsection 1 of section 38-14.1-14, subsection 2 of section 38-14.1-21, subsection 1 of section 38-14.1-30, subdivision d of subsection 2 of section 38-14.1-37, sections 46-05-01, 54-01-13.1, and 54-02-07, subsection 2 of section 54-06-04, subdivision w of subsection 1 of section 54-07-01.2, sections 54-17.3-05, 54-17.3-07, 54-24-09, 55-01-01, 55-01-02, 55-01-02.1, 55-01-03, 55-01-04, 55-01-05, 55-01-06, 55-01-07, 55-01-10, 55-01-11, 55-02-01, 55-02-01.1, 55-02-01.2, 55-02-01.3, 55-02-03, 55-02-04, 55-02-05, 55-02-06, 55-02-07, 55-02-07.1, 55-02-08, 55-02-09, 55-02.1-02, 55-02.1-05, 55-03-01, 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-06-01, subsections 9 and 10 of section 55-08-01.3, sections 55-10-02, 55-10-07, 55-10-08, 55-10-09, 55-10-10, 55-10-12, and 57-02-08.7 of the North Dakota Century Code, relating to the duties and responsibilities of the state historical board and the state historical society and changing references from the superintendent of the state historical board to the director of the state historical society; to repeal sections 55-01-08, 55-02-02, 55-10-03, 55-10-04, 55-10-05, and 55-10-06 of the North Dakota Century Code, relating to the maintenance of the Roosevelt cabin, the transfer of property from the state historical society board to the North Dakota park service, and to the designation of historical sites; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-08-04.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1-08-04.1. State property having historical or artistic significance - Responsibilities of state historical ~~board~~ society and council on the arts - Review and advice on property for exhibition. Except for the board of higher education and state institutions under the jurisdiction of the board, every state official or entity that, on behalf of the state, holds, acquires, or receives property having historical or artistic significance shall document and inventory that property on forms furnished by the state historical ~~board~~ society. One copy of the completed form must be retained in the office of that official or entity and one copy must be filed with the state historical ~~board~~ society. The information filed with the ~~board~~ society must include a description of the property, the identity of the donor if acquired by gift, the

date the property was acquired or received, any conditions on acceptance of the property if given by gift, and appropriate evidence of ownership. The information must also indicate whether the property is intended for permanent or long-term exhibition on the capitol grounds or in public areas in the state capitol. With respect to property intended for permanent or long-term exhibition on the capitol grounds or in public areas in the state capitol, the state historical ~~board~~ society shall notify the state council on the arts. The council on the arts shall advise the capitol grounds planning commission with respect to permanent or long-term exhibition of ~~such the~~ the property on the capitol grounds or in public areas in the capitol. ~~Prior to~~ Before transfer of ownership or other disposal of property documented and inventoried under this section, that property must be offered to the state historical ~~board~~ society for inclusion in its historical collections.

SECTION 2. AMENDMENT. Section 11-11-53 of the North Dakota Century Code is amended and reenacted as follows:

11-11-53. Appropriation for historical works - Authorization of tax levy - Approval of state historical ~~board~~ society and attorney general.

1. The board of county commissioners of any county may appropriate out of the general fund of the county ~~such a~~ such a sum, not exceeding five thousand dollars annually, ~~as it may deem advisable,~~ to be paid to the historical society of ~~such the~~ the county and used for the promotion of historical work within the borders of ~~such the~~ the county, including the collection, preservation, and publication of historical material, and to disseminate historical information of the county, and in general to defray the expense of carrying on historical work in ~~such the~~ the county.
2. The board of county commissioners may levy a tax, not exceeding the limitation in subsection 8 of section 57-15-06.7, for the promotion of historical works within the borders of ~~such the~~ the county and in general defray the expense of carrying on historical work in the county including the maintenance of any historical room or building, and furthering the work of the historical society of ~~such the~~ the county. ~~Such The~~ Such ~~levy shall be~~ levy ~~is~~ is in addition to any moneys appropriated from the general fund of the county for historical work as provided in subsection 1. The board of county commissioners may, by resolution, submit the question of an additional tax levy to the qualified electors of the county at the next countywide general, primary, or special election. If sixty percent of the qualified electors voting ~~thereon shall~~ on the question approve, a tax ~~shall~~ must be levied not exceeding the limitation in subsection 8 of section 57-15-06.7, which tax may be expended as provided in this section.
3. The appropriation and levy authorized by this section ~~shall~~ may not be used to defray any expenses of a county historical society until it is incorporated under the laws of this state as a nonprofit corporation, is affiliated with and has its articles of incorporation and bylaws approved by the North Dakota state historical ~~board~~ society and the attorney general, and has contracted with the board of county commissioners in regard to the manner in which ~~such the~~ the funds received will be expended and the services to be provided. Historical societies ~~which that~~ which ~~qualified~~ qualified for county funds under ~~the provisions of~~ the provisions of subsection 1 ~~prior to before~~ before July 1, 1965, ~~shall~~ are not be required to have articles of incorporation and bylaws approved by the attorney general to receive funds under ~~the provisions of~~ the provisions of subsection 1.

SECTION 3. AMENDMENT. Subsection 7 of section 23-06-27 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Subsection 3 does not apply to the inadvertent disturbance of a human burial site, human remains, or burial goods when the state department of health and the state historical ~~board~~ society have been notified of ~~such the~~ disturbance and ~~such the~~ human remains and burial goods ~~shall~~ must be studied and reinterred pursuant to rules adopted by the state department of health and the state historical ~~board~~ society. Subsection 3 also does not apply to situations in which the state department of health and the state historical ~~board~~ society are notified of the need to disinter and move the contents of human burial sites ~~which that~~ are recorded with the state historical ~~board~~ society to prevent the destruction of ~~such the~~ human burial sites by actions including the construction of highways, dams, reservoirs, coal mines, power generation and transmission facilities, pipelines, farming practices, and other developments. Where feasible, ~~such the~~ developments should avoid disturbance of the human burial sites. In these situations ~~such the~~ disinterred human remains and burial goods must be studied and reinterred pursuant to rules adopted by the state department of health and the state historical ~~board~~ society.

SECTION 4. AMENDMENT. Section 38-14.1-10 of the North Dakota Century Code is amended and reenacted as follows:

38-14.1-10. Necessity of permit - Exception. It is unlawful for any operator to engage in surface coal mining operations without first obtaining from the commission a permit to do so; ~~in such form as is hereinafter provided~~. All existing surface coal mining operations must on July 1, 1979, comply with ~~the provisions of~~ this chapter and all ~~regulations promulgated pursuant thereto~~ rules adopted under the chapter, except that lands from which the coal has been removed ~~prior to~~ before July 1, 1979, are governed by the reclamation standards that were in effect at the time of coal removal from ~~such the~~ lands. ~~Any~~ A person or operator ~~may~~ shall engage in the inventorying and evaluation of cultural resources upon compliance with section 55-03-01 and may implement a cultural resource mitigation plan approved by the ~~superintendent~~ director of the state historical ~~board~~ society ~~prior to~~ before applying for or receiving an approved surface coal mining and reclamation permit.

SECTION 5. AMENDMENT. Subdivision u of subsection 1 of section 38-14.1-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- u. Cultural resource information including all of the following:
 - (1) A statement evidencing compliance with the requirements of chapter 55-03.
 - (2) A cultural resource inventory, including all buildings, structures, and objects referred to in section 55-03-01, covering the proposed permit and adjacent area conducted in accordance with guidelines developed by the state historic preservation office and the ~~superintendent~~ director of the state historical ~~board~~ society.

- (3) An evaluation of each cultural resource site which will be affected by any surface coal mining and reclamation operation. The evaluation must include sufficient information to allow the ~~superintendent~~ director to determine if the cultural resource site is significant in accordance with the national register criteria [36 CFR 60.4] and guidelines established by the ~~superintendent~~ director.
- (4) An appropriately scaled map identifying the location of each cultural resource site determined significant by the ~~superintendent~~ director within the proposed permit area and the adjacent area.
- (5) A description of adverse effects on significant cultural resources that may result from the proposed surface coal mining operations.
- (6) A statement that the permit applicant will inform the ~~superintendent~~ director and the commission of any discovery within the permitted area of previously unrecorded archaeological, cultural, or historic materials and allow reasonable time for the ~~superintendent~~ director to determine the significance of the discovery and, if determined significant, to approve a mitigation plan.
- (7) A plan approved by the ~~superintendent~~ director that has been or will be used to mitigate adverse effects on significant sites that are known, or a statement that such a plan will be approved and implemented ~~prior to~~ before any adverse effects. Any mitigation plan ~~which~~ that has not begun implementation within five years of plan approval is subject to review by the ~~superintendent~~ director.

SECTION 6. AMENDMENT. Subsection 2 of section 38-14.1-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The commission's approval or modification of the permit or permit revision application ~~shall~~ must include consideration of the advice and technical assistance of the state historical ~~board~~ society, the state department of health, the state soil conservation committee, the state game and fish department, the state forester, the state geologist, and the state engineer, and may also include those state agencies versed in soils, agronomy, ecology, geology, and hydrology, and other agencies and individuals experienced in reclaiming surface mined lands.

SECTION 7. AMENDMENT. Subsection 1 of section 38-14.1-30 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Within thirty days after a permit applicant is notified of a ruling by the commission pursuant to section 38-14.1-20, or after an operator or permittee is issued a notice or order pursuant to subdivision a or b of subsection 1 of section 38-14.1-28, or after the commission disapproves an application for release of all or a portion of a performance bond under section 38-14.1-17, or after the ~~superintendent~~ director of the

state historical ~~board~~ society renders a decision on an application for approval of a cultural resources mitigation plan under section 38-14.1-10 and subdivision u of subsection 1 of section 38-14.1-14, ~~such the~~ applicant, ~~or~~ operator, or permittee, or any person with an interest ~~which that~~ is or may be adversely affected by ~~such the~~ ruling, notice, or order or by an order modifying, vacating, or terminating a notice or order, may request and ~~thereby~~ initiate formal hearing procedures before the commission. The right to ~~such the~~ administrative review is forfeited if not requested within thirty days of ~~such the~~ notification of any ruling or issuance of a notice of violation or order as provided in this subsection. The filing of an application for review under this subsection does not operate as a stay of any order or notice.

SECTION 8. AMENDMENT. Subdivision d of subsection 2 of section 38-14.1-37 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- d. The collection of cultural resource information required by subdivision u of subsection 1 of section 38-14.1-14, any other archaeological and historical information required by the ~~superintendent~~ director of the state historical ~~board~~ society, and the preparation of mitigation plans necessitated thereby.

SECTION 9. AMENDMENT. Section 46-05-01 of the 1999 Supplement to 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 ~~board~~ society, to the address designated by the ~~secretary~~ director, two copies 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 10. AMENDMENT. Section 54-01-13.1 of the North Dakota Century Code is amended and reenacted as follows:

54-01-13.1. Exchange of lands within Theodore Roosevelt National Memorial Park. The state of North Dakota is hereby authorized to transfer and

convey to the United States of America any lands situated within the Theodore Roosevelt National Memorial Park in the county of Billings, state of North Dakota, including state school lands and lands held by the state historical society or for the use and benefit of the state game and fish department, such transfer and conveyance to be made in exchange for federal lands of not less than equal value situated outside of the Theodore Roosevelt National Memorial Park.

SECTION 11. AMENDMENT. Section 54-02-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-02-07. Theodore Roosevelt rough rider award. There shall be awarded by the state of North Dakota in the name of the legislative assembly and the citizens of this state, an award to be known as the Theodore Roosevelt rough rider award. ~~Such~~ The award shall be is the highest recognition by the state of present or former North Dakotans who have been influenced by this state in achieving national recognition in their fields of endeavor, thereby reflecting credit and honor upon this state and its citizens. The award ~~shall is not be~~ for momentary success, but only for genuine achievements of lasting significance. It is the intent of this section to guard the dignity of the rough rider award for recipients of the past as well as the future. The award, of a type and design approved by the governor, must be awarded by the governor upon the concurrence of the secretary of state and the ~~superintendent~~ director of the state historical ~~board society~~. A record of all such awards and pertinent information in regard to each recipient must be retained by the state archivist.

²⁴⁸ **SECTION 12. AMENDMENT.** Subsection 2 of section 54-06-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A committee composed of the ~~superintendent~~ director of the state historical ~~board society~~, the state librarian, and the secretary of state, or other persons designated to represent them, shall meet at the call of the secretary of state to set the requirements for form, style, materials, and content of biennial reports.

²⁴⁹ **SECTION 13. AMENDMENT.** Subdivision w of subsection 1 of section 54-07-01.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- w. The ~~Yellowstone-Missouri-Fort Union~~ Yellowstone-Missouri Rivers confluence commission.

SECTION 14. AMENDMENT. Section 54-17.3-05 of the North Dakota Century Code is amended and reenacted as follows:

54-17.3-05. Coordination of quaternary fossil finds. The state geologist shall notify the ~~superintendent~~ director of the state historical ~~board society~~ of all quaternary paleontological finds reported to the state geologist which potentially or

²⁴⁸ Section 54-06-04 was also amended by section 25 of Senate Bill No. 2032, chapter 488, and section 88 of Senate Bill No. 2164, chapter 88.

²⁴⁹ Section 54-07-01.2 was also amended by section 29 of House Bill No. 1046, chapter 161, and section 5 of Senate Bill No. 2251, chapter 501.

actually contain cultural resources. The treatment of sites containing both paleontological remains and cultural resources ~~will~~ must be handled in a manner jointly agreed upon by the state geologist and the ~~superintendent~~ director. The term cultural resources has the same definition as the term is defined in section 55-03-00.1.

SECTION 15. AMENDMENT. Section 54-17.3-07 of the North Dakota Century Code is amended and reenacted as follows:

54-17.3-07. Transfer of paleontological resources. The state geologist may exchange with or transfer to universities, colleges, governmental bodies, and scientific institutions duplicate paleontological resources it holds. The state historical ~~board~~ society must receive preference for the receipt of duplicate paleontological resources.

SECTION 16. AMENDMENT. Section 54-24-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-24-09. Distribution of certain state publications for certain libraries required. The office of management and budget shall arrange to deposit with the state library eight copies of all publications issued by all executive, legislative, and judicial agencies of state government intended for general public distribution. These publications must be provided to the state library without charge. If expense and limited supply of state publications, particularly audiovisual items, make compliance with the depository requirement impossible, the state library shall accept as many copies as an agency can afford to provide. However, each agency shall provide no less than two copies to the state library. State publications refer to any informational materials regardless of format, method of reproduction, or source, originating in or produced with the imprint of, by the authority of, or at the total or partial expense of, any state agency. The definition incorporates those publications that may or may not be financed by state funds but are released by private bodies such as research and consultant firms under contract with or supervision of any state agency. In circumstances not directly involving the office of management and budget, a state agency shall comply with the depository requirement by arranging with the necessary parties for the printing and deposit of eight copies of any state publication issued. State publications are specifically defined as public documents appearing as reports, directories, statistical compendiums, bibliographies, laws or bills, rules, regulations, newsletters, bulletins, state plans, brochures, periodicals, committee minutes, transcripts of public hearings, other printed matter, audiotapes, videotapes, films, filmstrips, or slides, but not those administrative or training materials used only within the issuing agency. As the document acquisition and distribution agency, the state library shall retain for its document collection two copies of every state document received and transmit the remaining copies to the depository libraries. These are the libraries of the state historical ~~board~~ society, the university of North Dakota, North Dakota state university, library of Congress, and two others to be designated by the state library. All nondepository North Dakota libraries may receive state documents under an optional selection program developed by the state library. The state library shall catalog state publications and arrange for their conversion to microfilm or to optical disk storage prescribed by the state records administrator and shall make available for distribution the same to the designated depository libraries.

SECTION 17. A new section to chapter 55-01 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Artifact" means an item that is produced, shaped, used, or selected by humans.
2. "Board" means the state historical board.
3. "Collections" means artifacts or documents acquired and preserved because of the potential value of the artifacts or documents as examples, reference material, or objects of aesthetic or educational importance.
4. "Director" means the chief executive and administrative officer of the state historical society.
5. "Society" means the state historical society of North Dakota.

²⁵⁰ **SECTION 18. AMENDMENT.** Section 55-01-01 of the North Dakota Century Code is amended and reenacted as follows:

55-01-01. State historical board. ~~There is a state historical society of North Dakota which is under the supervision and control of the state historical board. The board consists of twelve members, seven members who of whom are appointed by the governor. Each member appointed to the board must be a citizen and resident of the state of North Dakota. Appointments are for a term of three years from the first day of July to the thirtieth day of June of the third year or until a successor has been appointed and qualified. The governor shall appoint two members for terms commencing in 1996, two members for terms commencing in 1997, and three members for terms commencing in 1998. Vacancies occurring other than by the expiration of an appointive term must be filled by appointment for the remainder of the term only in the same manner as regular appointments. The remaining five members of the board are the secretary of state, director of the parks and recreation department, director of the department of transportation, director of the tourism department, and state treasurer, each of whom may appoint a designee to attend meetings with full voting privileges. The board of directors shall select from its membership a president, vice president, and secretary to serve as officers of the board. The secretary of state, director of the parks and recreation department, director of the department of transportation, director of the tourism department, and state treasurer are ex officio members of the board and shall take care that the interests of the state are protected. Each ex officio member may appoint a designee to attend meetings with full voting privileges.~~

SECTION 19. A new section to chapter 55-01 of the North Dakota Century Code is created and enacted as follows:

State historical society. The state historical society of North Dakota is created as an agency of the executive branch which is under the supervision and control of the board.

SECTION 20. AMENDMENT. Section 55-01-02 of the North Dakota Century Code is amended and reenacted as follows:

²⁵⁰ Section 55-01-01 was also amended by section 50 of Senate Bill No. 2032, chapter 488.

55-01-02. State historical board - Powers - Limitations. The state historical board is authorized to may:

1. Faithfully expend and apply all money received from the state, to the uses and purposes directed by law.
2. Hold all ~~its~~ present and future historical collections and property of the society for the state.
3. Dispose of or transfer ~~such any~~ articles in the collections ~~as~~ it deems appropriate. However, the board may not make any disposal or transfer before hearing an assessment of any proposed disposal or transfer by the ~~superintendent~~ director of the state historical ~~board~~ society. Disposal or transfer is to be by any appropriate means including ~~but not limited to~~ sale or exchange, ~~provided that the~~. The proceeds from the sale of articles must be deposited in the state treasury in a special revolving fund. All moneys in ~~such the~~ fund are ~~hereby~~ appropriated on a continuing basis for the purchase and care of other items for the collections. Unless other conditions are specified in a deed or gift, a reasonable attempt must be made to return articles to the original donor ~~prior to~~ before disposal by any other means.
4. Permit withdrawal from its collections and property of ~~such any~~ articles ~~as may be~~ needed for exhibition purposes under rules prescribed by the board.
5. Permit the withdrawal of books and collections from the library and museum temporarily under ~~such~~ rules as prescribed by the board ~~may prescribe~~.
6. Select and appoint a ~~superintendent~~ director to carry out the policies and directives of the board.
7. Acquire in behalf of the state of North Dakota lands, materials, and easements for historical purposes by lease, purchase, or gift.
8. Set aside for historical purposes ~~such all~~ lands ~~as are now~~ owned by the state and not held or acquired for some other purpose.
9. ~~Supervise, control, care for, maintain, preserve, and develop any such~~ Administer all lands, materials, and easements held for historical purposes as trustees for the state.
10. Administer ~~any such all~~ lands, materials, and easements held for historical purposes as an agent of the national park service, bureau of reclamation, corps of engineers, or any other division of federal, state, or local government.
11. ~~Cooperate with historical societies and associations duly organized under the laws of the state of North Dakota and to provide the same with publications, technical assistance, and advice and administer a grant system to assist with the development and operation of such societies and associations.~~
12. Establish standards by the adoption of rules to create ~~such~~ classes of membership in the state historical society of North Dakota as it deems

~~desirable~~, to determine the qualifications of any class of membership, to set forth the fees for ~~such~~ membership, and to provide for membership benefits.

The board, ~~however~~, may not sell, mortgage, transfer, or dispose of any of its collections or property except as authorized by law.

SECTION 21. AMENDMENT. Section 55-01-02.1 of the North Dakota Century Code is amended and reenacted as follows:

55-01-02.1. Board Society to have jurisdiction over heritage center. The ~~state historical board~~ society has jurisdiction over the administration and operations of the North Dakota heritage center building. The director of the office of management and budget is responsible for maintenance of the heritage center building. The ~~state historical board is responsible for the maintenance of~~ society shall maintain the board's collections displayed and stored at the heritage center and shall provide, or arrange, for the security of those collections.

SECTION 22. AMENDMENT. Section 55-01-03 of the North Dakota Century Code is amended and reenacted as follows:

55-01-03. Meetings - When held - Quorum - Compensation and expenses of members. The ~~state historical~~ board shall meet at the call of the president not less than every three months and seven members constitute a quorum. The ~~ex officio~~ members ~~shall~~ of the board not appointed by the governor may receive no additional compensation for service upon the board but must be paid their expenses when engaged in the discharge of their official duties as members of the board, in the same manner and amounts as other state officers are paid, from funds ~~available~~ appropriated to the board society.

SECTION 23. AMENDMENT. Section 55-01-04 of the North Dakota Century Code is amended and reenacted as follows:

55-01-04. Acceptance of gifts, grants, devises, bequests, donations, and assignments - Deposited with the state treasurer - How expended. The ~~state historical board~~ society may only receive and accept any grant, devise, bequest, donation, gift, or assignment of money, bonds, choses in action, or any property for any purpose consistent with the statutory responsibilities of the ~~board~~ society. The ~~board~~ society must receive and accept the same, and the right and title thereto, in the name of the state. All moneys coming into the hands of the ~~board~~ society as donations, gifts, grants, and bequests, unless by the terms of the donation, gift, grant, or bequest the moneys are required to be maintained in another manner, must be maintained within the state treasury. All rent, interest, or income from land, money, or property received by the ~~board~~ society by donation, gift, grant, or bequest must also be maintained within the state treasury unless by the terms of acquisition the moneys are required to be maintained in a different manner. The moneys must be paid out for the purposes prescribed by the donor ~~upon the approval of~~ as authorized by the state historical board by warrant-check prepared by the office of management and budget.

SECTION 24. AMENDMENT. Section 55-01-05 of the North Dakota Century Code is amended and reenacted as follows:

55-01-05. Land acquired for historical purposes - Title - Placed in custody of ~~old settlers' associations and county historical societies.~~ When land is contributed or purchased ~~as herein provided~~ for historical purposes, the title must

vest in the state of North Dakota. ~~Such~~ The land may be placed in the custody of the ~~old settlers' associations~~ county historical societies of the respective counties in which ~~such~~ the sites are located and may be improved and used ~~by them~~ for the accumulation and care of relics of historical interest. ~~Where~~ When it appears that the use and purpose of ~~such~~ the land is a matter of primarily local or regional interest, the state historical ~~board~~ society may, upon such terms, conditions, and consideration as the state historical board may require, transfer and convey the land to a political subdivision or nonprofit corporation where ~~such~~ the interest lay.

SECTION 25. AMENDMENT. Section 55-01-06 of the North Dakota Century Code is amended and reenacted as follows:

55-01-06. Historical collections - Loan to county historical societies - Preservation. When historical collections or materials are contributed or purchased by the state, they must be placed in the custody of the ~~state historical board~~ society, and those of a local historical nature may be loaned to the county historical societies when proper provision has been made for their care and preservation and when ~~such~~ the county historical society is duly organized and affiliated as provided in section 11-11-53.

SECTION 26. AMENDMENT. Section 55-01-07 of the North Dakota Century Code is amended and reenacted as follows:

55-01-07. Claims incurred by ~~board~~ society - How paid. All bills or claims against the state, arising by reason of expenditures authorized by the ~~state historical board~~ society for the purposes provided by law, must be submitted on vouchers to the office of the budget for approval and paid by warrant-check prepared by the office of management and budget.

SECTION 27. AMENDMENT. Section 55-01-10 of the North Dakota Century Code is amended and reenacted as follows:

55-01-10. Exchange of lands with other divisions of state government. ~~The state historical~~ Upon authorization by the board, the society may transfer and convey certain lands held by the ~~board~~ society to another agency of the state in exchange for lands held by ~~such~~ the other agency, and ~~such~~ the other agency may make the necessary conveyance to transfer and convey lands held by it to the ~~state historical board~~ society to effect ~~such~~ the exchange. ~~Such~~ The transfers may be made at any time the board and another agency deem ~~such~~ an exchange to be mutually advantageous.

SECTION 28. AMENDMENT. Section 55-01-11 of the North Dakota Century Code is amended and reenacted as follows:

55-01-11. State historical society ~~to locate pioneer buildings responsible for the Camp Hancock museum.~~ The state historical society, with the approval of its board of directors, may locate or place pioneer buildings or structures on the grounds of ~~shall maintain, supervise, and promote the Camp Hancock museum in the city of Bismarck. The maintenance, supervision, and promotion of such pioneer buildings must be under the control and direction of the state historical society.~~

SECTION 29. AMENDMENT. Section 55-02-01 of the North Dakota Century Code is amended and reenacted as follows:

55-02-01. State historical board - Appointment of superintendent director - Duties. The board shall appoint a superintendent director of the state historical society who shall act as chief administrative and executive officer in carrying out the policies and directives of the board and shall have charge of all employees and activities and shall perform such other duties as may be assigned to the superintendent director by the board.

SECTION 30. AMENDMENT. Section 55-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

55-02-01.1. Term of office - Vacancy - Salary and expenses. The superintendent director shall serve at the pleasure of the state historical board and until a successor is appointed and qualified. In case of vacancy by death, removal, resignation, or any other cause, the board shall fill the vacancy by appointment. The salary must be determined by the board within the limits of legislative appropriation ~~and the superintendent.~~ The director is entitled to compensation for expenses incurred while in the discharge of official duties, paid in the same manner and amounts as other state officials are paid, from funds available to the board.

SECTION 31. AMENDMENT. Section 55-02-01.2 of the North Dakota Century Code is amended and reenacted as follows:

55-02-01.2. Duties of the superintendent director. The superintendent director shall:

1. Collect artifacts, books, maps, charts, and other papers and materials illustrative of the history of this state in particular and of the west generally.
2. ~~Obtain from the early pioneers narratives of their exploits, perils, and adventures.~~
3. Procure facts and statements relative to the history, ~~progress, and decay of our Indian tribes of the state~~ so as to exhibit faithfully the antiquities and the past and present resources and conditions of this state.
4. 3. Purchase books to strengthen the ~~various departments of its collection society's collections~~ and ~~such any~~ other books, maps, charts, microforms, photographs, and other materials ~~as will to~~ facilitate the investigation of historic, scientific, and literary subjects. The secretary of state and all other state departments and agencies including the colleges and universities shall furnish to the superintendent director at least one copy of each state publication produced by that agency.
5. 4. Catalog, index, ~~microfilm, or store by optical disk medium~~ and duplicate all of the collections of the ~~board society~~ for the more convenient references of all persons who have occasion to consult the same.
6. 5. Prepare ~~annually for publication four quarterly reports of its collections and such other matters relating to the transactions of the board~~ publications relating to the society as may be useful to the public. ~~Such report must be in such form and in such binding as the state historical board shall determine and must be printed by the state. The board shall have charge of society is responsible for the distribution and sale of~~

~~such~~ the reports and shall account for the proceeds ~~received therefrom~~ to the office of the budget.

7. 6. Keep the museum exhibition rooms in the North Dakota heritage center open to visitors at all reasonable hours on business days without fee, except that admission fees may be charged for leased exhibitions. Admission fees collected for a leased exhibition must be deposited in a special account in the special revolving fund established under section 55-02-04 and may be used only to pay the associated costs of the exhibition. Any admission fees collected in excess of the costs of a leased exhibition must be deposited in the state general fund.
- ~~8.~~ 7. Organize, develop, and present educational materials and programs concerning the history of North Dakota for the use, information, and benefit of the public.
8. Cooperate with historical societies and associations duly organized under the laws of the state; provide the historical societies and associations with publications, technical assistance, and advice; and administer a grant system to assist with the development and operation of the societies and associations.

SECTION 32. AMENDMENT. Section 55-02-01.3 of the North Dakota Century Code is amended and reenacted as follows:

55-02-01.3. Survey of historical sites of the state historical society Director to advise director of parks and recreation department. The ~~superintendent~~ director shall annually visit the state parks and advise the director of the parks and recreation department on all matters pertaining to the preservation of historical and archaeological artifacts, and historical structures, ~~accuracy of signs, markers, visitor center labels, displays, literature relating to the parks, and historical interpretation of~~ in the state parks. These duties may be performed by the ~~superintendent's~~ director's duly designated representative.

SECTION 33. AMENDMENT. Section 55-02-03 of the North Dakota Century Code is amended and reenacted as follows:

55-02-03. Rules to protect property administered by the ~~board~~ state historical society - Penalty. The ~~superintendent~~ director of the state historical ~~board~~ society, when so authorized by the state historical board, has the power to make and enforce suitable rules and ~~regulations~~ relating to the protection, care, and use of any property administered by the ~~board~~ society and the violation of any ~~such regulation~~ rule constitutes an infraction.

SECTION 34. AMENDMENT. Section 55-02-04 of the North Dakota Century Code is amended and reenacted as follows:

55-02-04. Fees for use of facilities - Concession agreements - Duration - Appropriation.

1. The ~~superintendent~~ director of the state historical ~~board~~ society when so authorized by the state historical board shall:
 4. a. Fix and collect ~~such~~ reasonable fees as it may deem reasonable for the use of the facilities of any property administered by the ~~board;~~ society.

- 2- b. Enter into concession agreements or leases with private persons, firms, corporations, or limited liability companies for the operation of any services, including ~~without limitation~~ motels, cabins, or other lodging places, within the areas of any property administered by the ~~board but no such~~ society. A concession agreement or lease ~~shall~~ may not run for more than twenty years; ~~and~~.
- 3- c. Establish fees for admissions, use charges, and services provided by the ~~board~~ society.
2. All revenues collected for services, shipping or postage charges, fees, admissions, use charges, rentals, compensation for concession agreements, or funds received in the normal course of business from concession operations actually carried on by the state as a proprietor must be deposited in the state treasury in a special revolving fund. All moneys in ~~such the~~ fund are ~~hereby~~ appropriated on a continuing basis for expenditure in the course of carrying on the business activities of ~~such the~~ concession operations or providing the services from which the income is derived.

SECTION 35. AMENDMENT. Section 55-02-05 of the North Dakota Century Code is amended and reenacted as follows:

55-02-05. Contracting supervision and maintenance with other divisions of federal and state government - Compensation for expenses incurred. The ~~superintendent~~ director of the state historical ~~board~~ society, when so authorized by the state historical board, shall, for the purpose of avoiding undue expense or inconvenience, by contract with divisions of federal and state governments or political subdivisions, make suitable arrangements whereby one ~~shall~~ may supervise and maintain the holdings and property of the other. The board, service, department, or division providing ~~such the~~ services is entitled to compensation for actual and necessary expenses incurred in ~~such the~~ amounts; ~~if any, as may be~~ agreed upon.

SECTION 36. AMENDMENT. Section 55-02-06 of the North Dakota Century Code is amended and reenacted as follows:

55-02-06. State historical museum at Pembina - Chateau de Mores. The ~~superintendent~~ director of the state historical ~~board~~ society shall maintain and operate the state historical museum located at or near the city of Pembina, in the county of Pembina, and shall have custody of and preserve in the museum at Pembina, for the people of the state of North Dakota, objects of primitive Indian art and other articles of historical value to the state which are acquired for ~~such that~~ purpose. The state historical ~~board~~ society may accept gifts, donations, or contributions to be used or expended in the maintenance and operation of the historical museum and may transfer the operation of the museum to the city of Pembina upon such terms and conditions as the state historical board may require. The Chateau de Mores at Medora must be maintained and operated as a historic house museum under the direction of the state historical ~~board~~ society.

SECTION 37. AMENDMENT. Section 55-02-07 of the North Dakota Century Code is amended and reenacted as follows:

55-02-07. Protection of prehistoric or historic 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 of ~~North Dakota~~ or its political subdivisions or otherwise comes into its custody or possession and which is,

in the opinion of the ~~superintendent~~ 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. Notification of the ~~superintendent's~~ director's opinion of significance must be communicated to the appropriate governing official. The state historical board through the ~~superintendent~~ 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, provide ~~said~~ the governing official written direction for the care, protection, excavation, storage, destruction, or other disposition of ~~said~~ the significant artifact or site. ~~It is the responsibility of the~~ The state and its political subdivisions ~~to~~ shall cooperate with the state historical board 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 ~~shall~~ may approve ~~such~~ the demolition or alteration.

SECTION 38. AMENDMENT. Section 55-02-07.1 of the North Dakota Century Code is amended and reenacted as follows:

55-02-07.1. Protection of prehistoric or historic site locational data. The ~~superintendent~~ director of the state historical ~~board~~ society may limit access to, and release of, information from files of the state historical society of North Dakota which contain data that specifically identifies the location of archaeological, historical, or paleontological sites in North Dakota. No access to, or release of, information from files ~~which that~~ contain ~~such~~ site-specific locational data may be made until the ~~superintendent~~ director is satisfied that the applicant has a reasonable need for the information contained in those files and professionally acceptable qualifications to assure that release of the information will not result in unnecessary destruction of the resource.

SECTION 39. AMENDMENT. Section 55-02-08 of the North Dakota Century Code is amended and reenacted as follows:

55-02-08. Custody and control of former executive mansion - Maintenance responsibility. The custody and control of the former executive mansion located at 320 Avenue B East in the city of Bismarck, North Dakota, with the legal description of lots 3 and 4, Block 11, Northern Pacific Addition to the city of Bismarck, is the responsibility of the state historical ~~board~~ society.

SECTION 40. AMENDMENT. Section 55-02-09 of the North Dakota Century Code is amended and reenacted as follows:

55-02-09. Historical impact emergency fund - Administration by ~~superintendent~~ director of state historical ~~board~~ society - Emergency commission authorization. There is hereby created a The director of the state historical society shall administer the historical impact emergency fund ~~to be administered by the superintendent of the state historical board~~ for the purpose of emergency mitigation of adverse effects on cultural resources and historical buildings, structures, or objects in the state. The ~~superintendent~~ director may use the moneys in the historical impact emergency fund only after the emergency commission has authorized the proposed use and expenditure. The historical impact emergency fund may receive moneys by legislative appropriation and by gift, grant, devise, or bequest of any money or property to the fund. The fund is not subject to section 54-44.1-11 and all income and moneys derived from the investment of the fund must be credited to the fund.

SECTION 41. AMENDMENT. Section 55-02.1-02 of the North Dakota Century Code is amended and reenacted as follows:

55-02.1-02. State archivist - Compensation. The ~~superintendent director~~ director of the state historical ~~board~~ society shall employ an archivist in the position of state archivist, who must be under the general supervision of the ~~superintendent director~~, and any other personnel necessary to administer this chapter. The compensation of personnel employed by the ~~superintendent director~~ director must be set within the limits of legislative appropriations.

SECTION 42. AMENDMENT. Section 55-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

55-02.1-05. Depositories of archival resources. The state historical ~~board~~ society ~~must be~~ is the depository of the archival resources of the state. However, the state historical ~~board~~ society may enter into agreements with the state universities or any other public or quasi-public or private institutions, agencies, or corporations to serve as depositories of regional archival resources. The agreements must specify the area to be served by the depositories and the method of assessing, cataloging, housing, preserving, and servicing materials placed by the state archivist in the regional depositories. The state archivist may deposit in regional depositories, with title remaining with the state historical ~~board~~ society, the records of state agencies or their district or regional offices which are primarily located in the geographic area serviced by the depository. All archival resources from central departments, offices, and agencies must be placed in the main archives in the heritage center in Bismarck under the state historical ~~board's~~ society's immediate jurisdiction. However, the state archivist may place archival resources temporarily at a regional depository. The state archivist may take any steps deemed necessary to provide for the safety of archival resources and other articles and materials entrusted to the archivist's custody in the archives, including temporary removal to safer locations, as may be dictated by any disaster emergency situation.

SECTION 43. AMENDMENT. Section 55-03-01 of the North Dakota Century Code is amended and reenacted as follows:

55-03-01. Permit required to investigate, evaluate, or mitigate adverse effect on cultural resources, historic buildings, structures, or objects - Application - Fee. Any ~~individual, organization, institution, or company person~~ person engaged ~~on one's own behalf or on behalf of another~~ in identifying, evaluating, or mitigating adverse effects on cultural resources, historic buildings, structures, or objects on any lands in North Dakota, under section 106 of the National Historic Preservation Act of 1966 [Pub. L. 89-665; 80 Stat. 915; 16 U.S.C. 470, as amended by Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, and Pub. L. 94-458], 36 CFR 800, or subdivision u of subsection 1 of section 38-14.1-14 ~~must, shall~~ obtain an annual permit from the ~~superintendent director~~ director of the state historical ~~board of North Dakota~~ society. The permit application must be in the form prescribed by the ~~superintendent director~~ director. Each application must be accompanied by a filing fee of one hundred dollars. The ~~superintendent director~~ director may waive the fee requirement if the applicant is an instrumentality of the state of North Dakota. Following issuance of the annual permit, the permittee shall submit to the state historical ~~society of North Dakota~~ society payment in the amount of fifty dollars with every cultural resources identification, evaluation, and mitigation report submitted to the ~~superintendent director~~ director in compliance with the federal and state statutory and regulatory requirements identified in this section. A permittee submitting a report on behalf of a nonprofit corporation formed under chapter 10-33 does not have to pay the fee for filing the report.

SECTION 44. AMENDMENT. Section 55-03-01.1 of the North Dakota Century Code is amended and reenacted as follows:

55-03-01.1. Permit required to investigate, excavate, or otherwise record cultural resources on land owned by an instrumentality of the state of North Dakota and to excavate cultural resources on private land. Any individual, organization, institution, or company ~~person~~ engaged ~~on one's own behalf or on behalf of another~~ in the investigation, excavation, or other recording of cultural resources on land owned by an instrumentality of the state of North Dakota or in the excavation of cultural resources on private land for any purposes other than those identified in section 55-03-01 first shall obtain a permit from the ~~superintendent~~ director. ~~Such permit may be issued when an application in such form and including such information as prescribed by the superintendent has been filed with such officer.~~ Any such A permit may be granted only for the investigation, excavation, or other recording of cultural resources at the locations described in the application for permit. Each ~~such~~ application must be accompanied by a fee of one hundred dollars.

SECTION 45. AMENDMENT. Section 55-03-02 of the North Dakota Century Code is amended and reenacted as follows:

55-03-02. Contents of permit. Any A permit issued pursuant to an application made ~~as provided for in~~ under section 55-03-01 or 55-03-01.1 must clearly describe the purpose of the permit and must be in ~~such the~~ form as prescribed by the ~~superintendent~~ director. ~~No~~ A permit may ~~not~~ be granted until the ~~superintendent~~ director is satisfied that the applicant is professionally qualified to conduct that work for which a the permit is required ~~as provided for in section 55-03-01 or 55-03-01.1~~. When the cultural resources are on land owned by an instrumentality of the state of North Dakota, ~~such the~~ permit ~~will~~ may not be granted until the applicant has agreed to deliver to the ~~superintendent~~ director all of the archaeological or historical materials found and removed from ~~such the~~ land. When the cultural resources are on private land, ~~such the~~ permit ~~will~~ may not be granted until the applicant has agreed to deliver to the ~~superintendent~~ director all of the human remains and burial goods, as ~~such terms are~~ defined in section 23-06-27, found and removed from ~~such the~~ land. ~~In all cases,~~ a A permit may not be granted until the applicant has agreed to deliver to the ~~superintendent~~ director copies of all records and reports as determined by the ~~superintendent~~ director to be pertinent to the work performed.

SECTION 46. AMENDMENT. Section 55-03-03 of the North Dakota Century Code is amended and reenacted as follows:

55-03-03. Period for which permit granted - Revocation. Each permit issued ~~pursuant to an application made as required by~~ under section 55-03-01 terminates on December thirty-first of the year in which it is issued. Any permit issued ~~pursuant to the provisions of~~ under section 55-03-01 or 55-03-01.1 may be revoked by the ~~superintendent~~ director at any time if it appears ~~to such officer~~ that any identification, evaluation, or mitigation of adverse effects on cultural resources, historic buildings, structures, or objects performed by the permittee are being conducted negligently or improperly, or without regard for the careful preservation and conservation of the artifacts and materials they contain.

SECTION 47. AMENDMENT. Section 55-03-04 of the North Dakota Century Code is amended and reenacted as follows:

55-03-04. Fees deposited in revolving fund - Use. All fees collected by the ~~superintendent~~ director under the provisions of sections 55-03-01 and 55-03-01.1 must be deposited in the revolving fund of the state historical ~~board~~ society and must be used by the ~~superintendent~~ director for making investigations of permit applicants and for the management and analysis of records and artifacts submitted to the ~~superintendent~~ director under the provisions of sections 55-03-01, 55-03-01.1, and 55-03-02.

²⁵¹ **SECTION 48. AMENDMENT.** Section 55-06-01 of the North Dakota Century Code is amended and reenacted as follows:

55-06-01. ~~Yellowstone-Missouri-Fort Union~~ Yellowstone-Missouri Rivers confluence commission. There is a ~~Yellowstone-Missouri-Fort Union~~ Yellowstone-Missouri Rivers confluence commission; hereinafter referred to as the "commission", ~~declared to be.~~ The commission is a governmental agency with the authority to exercise the powers specified herein, or which may be reasonably implied; The commission is composed of the governor as chairman, the president of the senate, the speaker of the house, the ~~superintendent~~ director of the state historical ~~board~~ society, the director of the department of economic development and finance, all ex officio, and five citizens of the state to be appointed by the governor who shall serve without compensation for the purpose of investigating, in cooperation with the state of Montana and the national park service, the historical importance and significance of the confluence area and for formulating and executing plans for the preservation of the historic sites illustrative of the history of the United States. The commission may expend its operating expenses and other funds provided by legislative appropriations, and public and private grants, for programs, improvements, and facilities to preserve and improve the Yellowstone-Missouri confluence area.

SECTION 49. AMENDMENT. Subsections 9 and 10 of section 55-08-01.3 of the North Dakota Century Code are amended and reenacted as follows:

9. Seek the advice of the ~~superintendent~~ director of the state historical ~~board~~ society on all matters relating to history, prehistory, and paleontology of the state parks. ~~If additional assistance is needed or required, the superintendent shall coordinate the assistance.~~
10. Advise in advance and consult with the ~~superintendent~~ director of the state historical ~~board~~ society before undertaking any earthmoving operations or major constructions so that the director may be advised whether the earthmoving operations or constructions might endanger historical or archaeological artifacts or the paleontological value of the area. The ~~superintendent~~ director of the state historical ~~board~~ society and the director shall jointly agree on the disposition of historical artifacts and archaeological material at ~~state monuments and~~ state parks.

SECTION 50. AMENDMENT. Section 55-10-02 of the North Dakota Century Code is amended and reenacted as follows:

²⁵¹ Section 55-06-01 was also amended by section 51 of Senate Bill No. 2032, chapter 488.

55-10-02. Definitions.

1. Land or water areas containing historic or archaeological value for the purpose of this chapter are designated as "state historic sites". A state historic site is also an area designated by the state historical society of ~~North Dakota~~ as a site possessing historical value of state or national significance. The term state historic site includes the items defined in this section.
2. A "state historical marker" is a plaque, sign, or marker authorized by the state historical society of ~~North Dakota~~ and includes markers maintained by the department of transportation, the state parks and recreation department, or other departments or agencies of the state and its governmental subdivisions.
3. A "state archaeological site" is an area; that primarily ~~relating~~ relates to prehistoric man, designated by the state historical society of ~~North Dakota~~ as possessing state or national significance.
4. The "state historic sites registry" ~~must be~~ is a listing of sites designated by the state historical board as state historic sites according to written criteria established by the board ~~and including but not limited to sites enumerated in this chapter~~. Sites ~~which~~ that have lost characteristics for which they were determined to meet the criteria may be removed from the registry by the state historical board. This registry, and any subsequent annual updates ~~thereto~~, must be published and distributed.

SECTION 51. AMENDMENT. Section 55-10-07 of the North Dakota Century Code is amended and reenacted as follows:

55-10-07. Notice to state historical ~~board~~ society of land acquisition.

Whenever the state or any governmental subdivision acquires any of the property listed in the state historic sites registry; ~~as defined in subsection 4 of section 55-10-02~~, as a state historic site, ~~it is the duty of~~ the officer in charge of ~~such~~ the acquisition ~~to shall~~ notify in writing, as promptly as may be expedient, the ~~superintendent~~ director of the state historical ~~board~~ society of ~~such~~ the acquisition.

SECTION 52. AMENDMENT. Section 55-10-08 of the North Dakota Century Code is amended and reenacted as follows:

55-10-08. Duties of the state and ~~governmental~~ political subdivisions in regard to state historic sites - Historic easements - Prohibitions.

1. The state, its departments and agencies; and each city, county, school district, and other body corporate and politic, political subdivision are by this chapter notified of the existence of state historic sites on land and water areas in North Dakota listed in the state historic sites registry; ~~as defined in subsection 4 of section 55-10-02~~.
2. The state or ~~any of the instrumentalities of government enumerated in subsection 4~~ 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; ~~defined in subsection 4 of section 55-10-02~~, as a state historic site without first obtaining the prior approval ~~thereof~~ from the ~~superintendent~~ director of the state historical ~~board~~ society upon authorization of the state historical board. ~~It is the responsibility of the~~

~~The state or instrumentalities of government enumerated in subsection 4~~ and political subdivisions shall cooperate with the director of the state historical board society in identifying and implementing any reasonable alternative to demolition or alteration of any state historic site before the board approves ~~such~~ the demolition or alteration.

3. The state or ~~any of the instrumentalities of government enumerated in subsection 4~~ a political subdivision may acquire fee title to a state historic site, or property listed in the national register of historic places, or may acquire a historic easement with respect to a privately owned state historic site, or property listed in the national register of historic places, and buildings and structures thereon when restored, reconstructed, or improved in accordance with plans approved by the ~~superintendent~~ director of the state historical ~~board~~ society. A historic easement is:
 - a. A nonpossessory interest in the real property, imposing limitations or affirmative obligations the purposes of which include preserving the historic aspects of the property as so restored, reconstructed, or improved;
 - b. Created and capable of being conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements, except as otherwise provided in this subsection; provided, that no right or duty in favor of or against a holder or another party having a right of enforcement arises under a historic easement before it is accepted by the holder and the acceptance is recorded;
 - c. Held by the grantee for the benefit of its citizens and the people of the state generally;
 - d. Specifically enforceable by the grantee or, if so provided by the grant, by the state or ~~another instrumentality of government enumerated in subsection 4~~ a political subdivision;
 - e. Binding upon the holder of the servient tenement and that person's successors and assigns;
 - f. Limited to a term of years provided in the grant and approved by the ~~superintendent~~ director of the state historical ~~board~~ society, not exceeding the estimated useful life of the real property as restored, reconstructed, or improved, and not less than the term of any loan made by the holder to finance in whole or in part the cost of the restoration, reconstruction, or improvement;
 - g. Subject to no other legal limitation upon the duration of estates or of restraint on the alienation thereof, except the limitation contained in section 47-05-02.1; and
 - h. Subordinate to any interest existing when the easement is created, in the real property affected thereby, unless the owner of the interest is the grantor of the easement or consents to it.
4. A historic easement is valid even though:

- a. It is not appurtenant to an interest in real property;
 - b. It can be or has been assigned to another holder;
 - c. It is not of a character that has been recognized traditionally at common law;
 - d. It imposes a negative burden;
 - e. It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
 - f. The benefit does not touch or concern real property; or
 - g. There is no privity of estate or of contract.
5. A project comprising the acquisition of a state historic site or of a historic easement with reference thereto, and the restoration, reconstruction, and improvement of the site and buildings and structures thereon to preserve physical characteristics of historic importance, is declared to be a proper and necessary purpose for the expenditure of public funds. The proceeds of tax increments or bonds or both may be expended by a city for such a project within an urban renewal area when determined by the governing body to be desirable for the redevelopment, rehabilitation, and conservation of the area in accordance with ~~the provisions of~~ chapter 40-58.
6. If any state agency or department or a ~~city, county, school district, or other~~ political subdivision objects to any decision of the state historical board to disallow alteration or demolition of a site listed on the state ~~historical~~ historic sites registry, the objecting party may submit the objection to arbitration ~~as provided in this subsection~~. Arbitration may also be demanded by either the board or the objecting party if the board or the objecting party determines that the other has failed to cooperate in identifying or implementing reasonable alternatives to demolition or alteration. The party desiring arbitration shall make a written demand therefor of the other and in ~~such~~ the demand shall name three arbitrators. The demand must also set forth the objections ~~which~~ that the party desires to submit to arbitration, with reference to the particular state historic site. The demand must be made within ninety days of a decision by the board. The demand must be served upon the other party, which, within ten days, shall name in writing three arbitrators, and ~~in connection therewith~~ shall set forth in writing its response to the objections set forth in the demand served upon it and any additional objections ~~which~~ that it desires to submit to arbitration on its part. The six arbitrators ~~so~~ selected shall name a seventh arbitrator. If the party proceeded against fails or refuses to name three arbitrators, the moving party may apply ex parte to the judge of the district court of the county in which the state historic site in question, or any part thereof, ~~may be is~~ located, for the appointment of the unnamed arbitrators, ~~and if~~. If upon the appointment of three arbitrators by each of the parties, the six ~~so~~ ~~appointed~~ have been unable to agree upon a seventh arbitrator within five days, ~~then~~ either party, upon five days' notice may apply to the district court for the appointment of the seventh arbitrator. The political subdivision may select its arbitrators from among the governing board of the affected political subdivision, from any regular or special committee

appointed by the governing board, whether serving on such governing board or not, or from any combination thereof. A state agency may select its arbitrators from its officers or employees. The state historical board may select its arbitrators from among the board itself, from an executive committee of the board, or from any combination thereof. When a panel of arbitrators has been appointed, a submission in writing must be acknowledged by the parties ~~thereto~~ in the same manner as a conveyance of real property and may fix the time on or before which the award must be made. The submission must provide for the entry of judgment upon the award by the district court of the county within which the state historical site or some part thereof is located. The submission must also provide that each party shall bear its own arbitration costs and expenses, however, the costs and expenses relating to the seventh arbitrator must be borne equally by both parties to the dispute. The seven arbitrators shall proceed to resolve the controversies brought before them, and the decision of the arbitrators, or a majority of them, must be given in writing to the parties concerned and is binding upon both parties. Thereafter, the arbitration must proceed in accordance with ~~the provisions of~~ chapter 32-29.2.

SECTION 53. AMENDMENT. Section 55-10-09 of the North Dakota Century Code is amended and reenacted as follows:

55-10-09. Cooperation. The state and its ~~governmental~~ political subdivisions shall cooperate with the ~~superintendent~~ director of the state historical ~~board~~ society in safeguarding state historic sites and in the preservation of historic and archaeological sites.

SECTION 54. AMENDMENT. Section 55-10-10 of the North Dakota Century Code is amended and reenacted as follows:

55-10-10. North Dakota historic sites - Changes. Sites designated as state historic sites ~~by sections 55-10-03, 55-10-04, 55-10-05, and 55-10-06~~ may be changed from time to time, ~~and the superintendent.~~ The director of the state historical ~~board~~ society shall notify the legislative assembly of ~~the needs for such changes and make recommendations in regard thereto so that the registries of historic sites may be kept current and complete~~ each change.

SECTION 55. AMENDMENT. Section 55-10-12 of the North Dakota Century Code is amended and reenacted as follows:

55-10-12. Authority to mark sites. The ~~superintendent~~ director of the state historical ~~board~~ society may authorize, fund, and place state historical markers, ~~as defined by subsection 2 of section 55-10-02,~~ on any site listed in the state historic sites registry. This includes authority to negotiate with private property owners to mark privately owned sites but does not include agreements to pay private property owners compensation to mark ~~such~~ the property.

SECTION 56. AMENDMENT. Section 57-02-08.7 of the North Dakota Century Code is amended and reenacted as follows:

57-02-08.7. License fee in lieu of property taxes on leases for tourism or concession purposes. Payment of the license fee as provided in this section by the lessee of any leasehold interest in state-owned property leased from the ~~superintendent~~ director of the state historical ~~board~~ society or the director of the parks and recreation department is a payment in lieu of all ad valorem taxes on the

leasehold interest or any associated building or other improvement if the lessee uses the property, building, or other improvement primarily for tourism or concession purposes. The ~~superintendent~~ director of the state historical society or the director of the parks and recreation department shall establish the license fee at an annual amount not less than one dollar and not more than one percent of the gross receipts from the tourism or concession enterprise. The lessee shall pay the license fee to the treasurer of the county in which the tourism or concession enterprise is located and all fees received under this section must be deposited in the county general fund. The lease must indicate that the ~~superintendent~~ director of the state historical society or the director of the parks and recreation department approves use of the property primarily for tourism or concession purposes and intends the license fee paid by the lessee to be in lieu of ad valorem taxes.

SECTION 57. REPEAL. Sections 55-01-08, 55-02-02, 55-10-03, 55-10-04, 55-10-05, and 55-10-06 of the North Dakota Century Code are repealed.

SECTION 58. EFFECTIVE DATE. This Act becomes effective on July 1, 2001.

SECTION 59. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 2001
Filed March 29, 2001

CHAPTER 504

SENATE BILL NO. 2420

(Senators Trenbeath, Bercier, Holmberg, Traynor)
(Representatives Monson, Tieman)

PEMBINA COUNTY LAND REIMBURSEMENT

AN ACT to authorize the state historical society of North Dakota to reimburse Pembina County for certain land in Pembina County; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REIMBURSEMENT FOR LAND AUTHORIZED. The state of North Dakota shall reimburse Pembina County for its cost, not to exceed the sum of \$15,000, in acquiring the property described in this section and known variously as the Selkirk cemetery, the Metis cemetery, or the Dumoulin Mission cemetery, upon condition that Pembina County either keeps and preserves the property in accordance with North Dakota Century Code section 23-06-30 or in the alternative transfers the property to a suitable organization by deed adequately protecting the county by providing that the suitable organization, its successors and assigns, will preserve and maintain the property solely as a cemetery, for no other purpose, in perpetuity. The property is described as follows:

All that part of the northwest quarter (NW1/4) of section thirty-three (33), township one hundred sixty-four (164), range fifty-one (51), further described as follows: commencing at the northwest corner of said section thirty-three (33); thence S00°24'33"W along the west line of said quarter 994.07 feet; thence S89°35'30"E, 998.15 feet to the east right-of-way line of interstate highway no. I-29, the point of beginning; thence S59°52'00"E, 620.00 feet; thence S30°08'00"W, 703.00 feet; thence N59°52'00"W, 620.00 feet to said east right-of-way line; thence N30°08'00"E along said east line, 703.00 feet to the point of beginning, containing 10.01 acres and being graphically described on the plat of survey which is annexed hereto and incorporated herein by reference; the basis of all bearings being the east right-of-way line of interstate highway no. I-29, at the location of this parcel, as an assigned bearing of N30°08'00"E.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$15,000, or so much of the sum as may be necessary, to the state historical society of North Dakota for the purpose of reimbursing Pembina County pursuant to section 1 of this Act, for the biennium beginning July 1, 2001, and ending June 30, 2003.

Approved April 12, 2001
Filed April 12, 2001

TAXATION

CHAPTER 505

SENATE BILL NO. 2058

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

DELINQUENT TELECOMMUNICATIONS TAX COLLECTION

AN ACT to amend and reenact section 57-01-13 of the North Dakota Century Code, relating to the collection of delinquent telecommunications carriers tax from nonresident taxpayers and service of payment requests to delinquent nonresident taxpayers before assignment to a collection or credit agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-01-13 of the North Dakota Century Code is amended and reenacted as follows:

57-01-13. (Contingent expiration date - See note) Collection of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, and business and corporation privilege taxes.

1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38 ~~and~~, 57-39.2, and 57-40.2, the tax commissioner may, for the purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes due from a taxpayer not residing or domiciled in this state, contract with any collection or credit agency, within or without the state, for the collection of the delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes, including penalties and interest thereon. For purposes of this section, a delinquent tax is defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices in writing requesting payment, ~~the first two~~. The notices must be sent by ~~regular~~ first-class mail to the taxpayer at the taxpayer's last-known mailing address ~~and the~~. The third notice must be sent by certified or registered mail to the taxpayer's last-known mailing address with a copy of an affidavit of mailing. If the tax commissioner has assigned a delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes that become due from the same taxpayer may be assigned immediately and without further notice to the taxpayer, so long as the originally assigned liability has not been fully collected.

2. a. Fees for services, reimbursement, or any other remuneration to a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the tax commissioner and the collection or credit agency must provide for the payment of fees for the services, reimbursements, or other remuneration not in excess of fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege tax, including penalties and interest actually collected.
 - b. All funds collected by the collection or credit agency must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for the remittances must be prescribed by the tax commissioner. The tax commissioner shall transfer the funds to the state treasurer for deposit in the state general fund. An amount equal to the amount of fees for services, reimbursement, or any other remuneration to the collection or credit agency as set forth in the contract authorized by this section is appropriated as a standing and continuing appropriation to the tax commissioner for payment of fees due under the contract.
 - c. Before entering into a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.
3. A collection or credit agency entering into a contract with the tax commissioner for the collection of delinquent taxes pursuant to this section thereby agrees that it is doing business in this state for the purposes of the North Dakota income tax and business and corporation privilege tax laws.

(Contingent effective date - See note) Collection of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, and business and corporation privilege taxes.

1. Notwithstanding the secrecy and confidential information provisions in chapters 57-38 and 57-39.2, the tax commissioner may, for the purpose of collecting delinquent North Dakota sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunications carriers, income, or business and corporation privilege taxes due from a taxpayer not residing or domiciled in this state, contract with any collection or credit agency, within or without the state, for the collection of the delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, telecommunication carriers, income, or business and corporation privilege taxes, including penalties and interest thereon. For purposes of this section, a delinquent tax is defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been given at least three notices in writing requesting payment, ~~the first two~~. The notices must be sent by regular mail to the taxpayer at the taxpayer's last-known mailing address ~~and the~~. The third notice must be sent ~~by certified or registered mail to the taxpayer's~~

~~last known mailing address with a copy of an affidavit of mailing.~~ If the tax commissioner has assigned a delinquent tax liability pursuant to this section, subsequent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege taxes that become due from the same taxpayer may be assigned immediately and without further notice to the taxpayer, so long as the originally assigned liability has not been fully collected.

2. a. Fees for services, reimbursement, or any other remuneration to a collection or credit agency must be based on the amount of tax, penalty, and interest actually collected. Each contract entered into between the tax commissioner and the collection or credit agency must provide for the payment of fees for the services, reimbursements, or other remuneration not in excess of fifty percent of the amount of delinquent sales, use, motor vehicle fuels, special fuels, importer for use, aviation fuel, motor vehicle excise, income, or business and corporation privilege tax, including penalties and interest actually collected.
 - b. All funds collected, less the fees for collection services, as provided in the contract, must be remitted to the tax commissioner monthly from the date of collection from a taxpayer. Forms to be used for the remittances must be prescribed by the tax commissioner.
 - c. Before entering into a contract, the tax commissioner shall require a bond from the collection or credit agency not in excess of ten thousand dollars, guaranteeing compliance with the terms of the contract.
3. A collection or credit agency entering into a contract with the tax commissioner for the collection of delinquent taxes pursuant to this section thereby agrees that it is doing business in this state for the purposes of the North Dakota income tax and business and corporation privilege tax laws.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 506

SENATE BILL NO. 2064

(Finance and Taxation Committee)
(At the request of the State Tax Commissioner)

TAX COMMISSIONER INFORMATION DISCLOSURE

AN ACT to create and enact a new section to chapter 57-01 of the North Dakota Century Code, relating to the disclosure of information by the state tax commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-01 of the North Dakota Century Code is created and enacted as follows:

Disclosure of name and address by state tax commissioner.

Notwithstanding the secrecy and confidential information provisions of this title, for the purpose of properly administering the tax laws of this state, name and address information filed on returns by or on behalf of a person with the tax commissioner pursuant to a tax law of this state, obtained by the tax commissioner pursuant to that tax law, or furnished to the tax commissioner under section 6103 of the Internal Revenue Code [26 U.S.C. 6103] may be provided by the tax commissioner to the United States postal service or a national change-of-address vendor authorized by the United States postal service, for the sole purpose of obtaining proper and correct address information on that person.

Approved March 16, 2001

Filed March 16, 2001

CHAPTER 507**HOUSE BILL NO. 1059**

(Representatives Koppang, Gulleson, M. Klein)
(Senators Thane, Wardner)

**MEDICAL CARE TRANSPORTATION EXPENSE
DETERMINATION**

AN ACT to amend and reenact subsection 4 of section 57-02-08.1 of the North Dakota Century Code, relating to determination of medical care transportation expenses for purposes of the homestead property tax credit for senior citizens; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

4. In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any dependent person and not compensated for by insurance or otherwise must be deducted. For purposes of this section, the term "medical expenses" has the same meaning as it has for state income tax purposes, except that for transportation for medical care the person may use the standard mileage rate allowed for state officer and employee use of a motor vehicle under section 54-06-09.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 508

HOUSE BILL NO. 1222

(Representatives Brandenburg, Huether, Severson, Wikenheiser)
(Senators Erbele, Wanzek)

WIND TURBINE TAXABLE VALUATION

AN ACT to create and enact a new section to chapter 57-02 of the North Dakota Century Code, relating to reduction in taxable valuation of wind turbine electric generators that are centrally assessed property; to amend and reenact section 57-02-27 of the North Dakota Century Code, relating to determination of taxable valuation of property; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-27 of the North Dakota Century Code is amended and reenacted as follows:

57-02-27. Property to be valued at a percentage of assessed value - Classification of property - Limitation on valuation of annexed agricultural lands. All property subject to taxation based on the value thereof must be valued as follows:

1. All residential property to be valued at nine percent of assessed value. If any property is used for both residential and nonresidential purposes, the valuation must be prorated accordingly.
2. All agricultural property to be valued at ten percent of assessed value as determined pursuant to section 57-02-27.2.
3. All commercial, ~~air carrier transportation, and railroad~~ property to be valued at ten percent of assessed value.
4. All centrally assessed property, ~~except air carrier transportation and railroad property,~~ to be valued at ~~fourteen percent of assessed value for the 1981 property tax year, thirteen percent of assessed value for the 1982 property tax year, twelve percent of assessed value for the 1983 property tax year, eleven percent of assessed value for the 1984 property tax year, and ten percent of assessed value for all property tax years beginning on or after January 1, 1985~~ except as provided in section 2 of this Act.

The resulting amounts must be known as the taxable valuation. In determining the assessed value of real and personal property, except agricultural property, the assessor may not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor may the assessor adopt as a criterion of value the price at which said property would sell at auction, or at forced sale, or in the aggregate with all the property in the town or district, but the assessor shall value each article or description by itself, and at such sum or price as the assessor believes the same to be fairly worth in money. In assessing any tract, or lot of real property, there must be determined the value of the land, exclusive of improvements, and the value of all taxable improvements and structures thereon, and the aggregate

value of the property, including all taxable structures and other improvements, excluding the value of crops growing upon cultivated lands. In valuing any real property upon which there is a coal or other mine, or stone or other quarry, the same must be valued at such a price as such property, including the mine or quarry, would sell for at a fair voluntary sale for cash. Agricultural lands within the corporate limits of a city which are not platted constitute agricultural property and must be so classified and valued for ad valorem property tax purposes until such lands are put to another use. Agricultural lands, whether within the corporate limits of a city or not, which were platted and assessed as agricultural property prior to March 30, 1981, must be assessed as agricultural property for ad valorem property tax purposes until put to another use. Such valuation must be uniform with the valuation of adjoining unannexed agricultural land.

SECTION 2. A new section to chapter 57-02 of the North Dakota Century Code is created and enacted as follows:

Taxable valuation of centrally assessed wind turbine electric generators.

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

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 509

SENATE BILL NO. 2068

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

ASSESSMENT OF INUNDATED AGRICULTURAL LAND

AN ACT to amend and reenact subsection 6 of section 57-02-27.2 of the North Dakota Century Code, relating to the valuation and assessment of inundated agricultural land for property tax purposes; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

6. For purposes of this section, "inundated agricultural land" means property classified as agricultural property containing a minimum of ten contiguous acres if the value of the inundated land exceeds ten percent of the average agricultural value of noncropland for the county, which is inundated to an extent making it unsuitable for growing crops or grazing farm animals for a full two consecutive growing seasons or more, and which produced revenue from any source in the most recent prior year which is less than the county average revenue per acre for noncropland calculated by the agricultural economics department of the North Dakota state university. Application for classification as inundated agricultural land must be made in writing to the township assessor or county director of tax equalization by March thirty-first of each year, except that for the year 2001, the written application must be made within ninety days from March 16, 2001. Before all or part of a parcel of property may be classified as inundated agricultural land, the board of county commissioners must approve that classification for that property for the taxable year. The agricultural value of inundated agricultural lands for purposes of this section must be determined by the agricultural economics department of North Dakota state university to be ten percent of the average agricultural value of noncropland for the county as determined under this section. Valuation of individual parcels of inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

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

Approved March 16, 2001
Filed March 16, 2001

CHAPTER 510

HOUSE BILL NO. 1031

(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

PARK DISTRICT TAX LEVY CONSOLIDATION

AN ACT to amend and reenact subsection 1 of section 4-33-11, section 32-12.1-08, subsection 13 of section 40-49-12, section 40-55-09, subdivision a of subsection 2 of section 57-15-01.1, and sections 57-15-12, 57-15-12.1, 57-15-12.2, 57-15-12.3, 57-15-28.1, 57-15-36, and 57-15-60 of the North Dakota Century Code, relating to consolidation of property tax levy authority of park districts; to repeal section 57-15-37 of the North Dakota Century Code, relating to a tax levy for airport purposes in park districts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-33-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The governing body of any political subdivision ~~of this state~~ may appropriate money for the control of pests ~~pursuant to~~ under this chapter or section 63-01.1-04.2. If state funds are involved, the money must be expended according to control plans approved by the commissioner. The governing body of a political subdivision shall determine the portion, if any, of control program costs that should be paid by the political subdivision. Costs of the control program may be paid by moneys in the emergency fund. If the emergency fund is not sufficient to carry out the program, the governing body may expend money from the general fund and in this event the governing body ~~may~~, except the governing body of a park district, upon approval of sixty percent of those voting in any special election or the next regularly scheduled primary or general election, may levy a tax during the following year upon all taxable property in the political subdivision to fully reimburse the general fund for the amount expended except that the levy may not exceed the limitation in subsection 1 of section 57-15-28.1.

SECTION 2. AMENDMENT. Section 32-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

32-12.1-08. Political subdivision insurance reserve fund - Tax levy.

1. A political subdivision, other than a school district or park district, may establish and maintain an insurance reserve fund for insurance purposes, and all political subdivisions including school districts and park districts may include in the annual tax levy of the political subdivision such amounts as are determined by the governing body to be necessary for the purposes and uses of the insurance reserve fund. ~~Except in the case of a school district, the~~ The tax levy authorized by this section ~~shall~~ may not exceed the limitation in section 57-15-28.1,

except a levy by a school district or park district must be within the general fund levy authority of the school district or park district. If a political subdivision has no annual tax levy, the political subdivision may appropriate from any unexpended balance in its general fund such amounts as the governing body of the political subdivision ~~shall deem~~ determines necessary for the purposes and uses of the insurance reserve fund.

2. Except in the case of a school district or park district, the fund established pursuant to this section ~~shall~~ must be kept separate and apart from all other funds and ~~shall may~~ be used only for the payment of claims against the political subdivision which have been settled or compromised, judgments rendered against the political subdivision for injuries arising out of risks established by this chapter, or costs incurred in the defense of claims. Payments by a school district or park district for the same purposes ~~shall~~ must be made out of the district's political subdivision's general fund as established in section 57-15-14.2.

SECTION 3. AMENDMENT. Subsection 13 of section 40-49-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13. Levy taxes upon all the property within the district, ~~subject to the limitations of section 57-15-12.2~~ within the general fund levy authority of section 57-15-12, for the purpose of funding a comprehensive health care program for district employees.

SECTION 4. AMENDMENT. Section 40-55-09 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

40-55-09. Favorable vote at election - Procedure. Except in the case of a school district or park district, upon adoption of the public recreation system proposition at an election by a majority of the votes cast upon the proposition, the governing body of the municipality ~~or park district~~, by resolution or ordinance, shall provide for the establishment, maintenance, and conduct of a public recreation system, and thereafter levy and collect annually a tax of not more than two and five-tenths mills, or not more than eight and five-tenths mills if ~~the same is~~ authorized as ~~herein~~ provided by this section, on each dollar of the taxable valuation of all taxable property within the corporate limits or boundaries of the municipality ~~or park district~~. This tax is ~~to be~~ in addition to the maximum of taxes permitted to be levied in such municipality ~~or park district~~. The mill levy ~~herein~~ authorized by this section may be raised to not more than eight and five-tenths mills when the increase is approved by the citizens of the municipality ~~or park district~~ after submission of the question in the same manner as provided in section 40-55-08 for the establishment of the public recreation system. The governing body of the municipality ~~or park district~~ shall continue to levy the tax annually for public recreation purposes until the qualified voters, at a regular or special election, by a majority vote on the proposition, decide to discontinue the levy. The governing body of the municipality, ~~school district, or park district, in its discretion,~~ may appropriate additional funds for the operation of the public recreation system if in the opinion of the governing body additional funds are needed for the efficient operation thereof. This chapter does not limit the power of any municipality, school district, or park district to appropriate on its own initiative general municipal, school district, or park district tax funds for the operation of a public recreation system, a community center, or character building facility. A school district may levy a tax annually for the conduct and maintenance of a public recreation system pursuant to subdivision q of subsection 1 of section 57-15-14.2. A

park district may levy a tax annually within the general fund levy authority of section 57-15-12 for the conduct and maintenance of a public recreation system.

SECTION 5. AMENDMENT. Subdivision a of subsection 2 of section 57-15-01.1 of the North Dakota Century Code is amended and reenacted as follows:

- a. "Base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year. For a park district general fund the "amount levied in dollars in property taxes" is the sum of amounts levied in dollars in property taxes for the general fund under section 57-15-12 including any additional levy approved by the electors, the insurance reserve fund under section 32-12.1-08, the employee health care program under section 40-49-12, the public recreation system under section 40-55-09 including any additional levy approved by the electors, forestry purposes under section 57-15-12.1 except any additional levy approved by the electors, pest control under section 4-33-11, and handicapped person programs and activities under section 57-15-60;

SECTION 6. AMENDMENT. Section 57-15-12 of the North Dakota Century Code is amended and reenacted as follows:

57-15-12. Tax General fund levy limitations in park districts. ~~In park districts tax levies have the following limitations:~~

- 4- The aggregate amount levied for park district general fund purposes, exclusive of levies to pay interest on bonded debt and levies to pay and discharge the principal thereof, and levies to pay the principal and interest on special assessments assessed and levied against park board properties by other municipalities, may not exceed ~~an amount produced by a levy~~ the sum of the number of mills levied by the park district in taxable year 2000 for the general fund under section 57-15-12 including any additional levy approved by the electors, the insurance reserve fund under section 32-12.1-08, the employee health care program under section 40-49-12, the public recreation system under section 40-55-09 including any additional levy approved by the electors, forestry purposes under section 57-15-12.1 except any additional levy approved by the electors, pest control under section 4-33-11, and handicapped person programs and activities under section 57-15-60. A park district may increase its general fund levy under this section to any number of mills approved by a majority of the electors of the park district voting on the question at a regular or special park district election, up to a maximum levy under this section of ~~four~~ thirty-five mills on the dollar of the taxable valuation of the district for the current year.
- 2- ~~Any park district, owning and operating an airport for which no city levy is made, may levy an additional tax of not to exceed four mills on the dollar of the taxable valuation of the district for the current year, such additional tax to be used solely for the purpose of purchasing or acquiring lands necessary for said airport, paying for land previously acquired for said airport, and for operating and maintaining the same.~~
- 3- ~~Whenever the board of park commissioners deems it advisable to raise moneys by taxes in excess of the levy herein provided, for any purpose~~

for which the park district is authorized to expend moneys raised by taxes, the board of park commissioners shall submit to the voters of the district the question of increasing the levy by a certain number of mills, but not to exceed fifteen mills, on the dollar of the taxable valuation of the district. When authorized by a majority of the qualified electors of the park district voting on the question at an election in which the question has been submitted, the board may increase the levy in the amount so authorized. This excess levy may be continued from year to year by action of the park board except that if a petition containing the signatures of not less than ten percent of the qualified electors of the park district, as determined by the city auditor of the municipality in which the park district is situated, is presented to the park board requesting an election on the question of continuing the excess levy, that question must be submitted to the qualified electors of the park district at the next regular park district election. If the majority of the qualified electors voting on the question at that election determine not to continue the excess levy, no further excess levy may be made except that the election does not affect the tax levy in the calendar year in which the election is held.

SECTION 7. AMENDMENT. Section 57-15-12.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-12.1. City or park district tax levy or service charge for forestry purposes.

1. The governing body of a city or park district may ~~annually~~ levy annually a tax ~~not in excess of two mills on the taxable valuation of property within the city or park district for the purpose of providing to provide~~ funds for the establishment, operation, and maintenance of forestry activities within the city or park district. A tax levied by a city governing body under this section may not exceed two mills per dollar of taxable valuation of property within the city. A tax levied by a park district under this section must be within the general fund levy authority of the park district. The governing board of a city or park district, upon approval by a majority vote of the qualified electors voting on the question at any citywide or districtwide election, may also ~~annually~~ levy annually an additional tax not in excess of three mills on the taxable valuation of property within the city or park district for the purpose of providing funds for forestry activities within the city or park district. Any such tax park district levy approved by the electors and any city levy under this section is in addition to and not restricted by any mill levy limit prescribed by law. The proceeds of any such levy under this section may be used for forestry activities, including the following: prevention or control of Dutch elm disease or other diseases which may affect trees, shrubs, and other vegetation; purchasing, planting, or removal of trees, shrubs, and other vegetation; pruning and maintenance of trees, shrubs, and other vegetation; purchasing of necessary equipment; hiring of personnel; contracting for services; public information and technical assistance; and other items related to forestry activities which may be necessary to provide for proper care, maintenance, propagation, and improvement of forestry resources within the city or park district.
2. In lieu of a ~~mill~~ levy as specified in subsection 1, a city or park district may propose a service charge as an alternative form of financing. Such alternative form of financing must be approved by a majority vote of the

qualified electors voting on the question at any general or special citywide or districtwide election. The proceeds of any service charge may be used for forestry activities, as specified in subsection 1.

SECTION 8. AMENDMENT. Section 57-15-12.2 of the North Dakota Century Code is amended and reenacted as follows:

57-15-12.2. Exceptions to tax levy limitations in for park districts. The ~~tax general fund~~ levy limitations specified in section 57-15-12 do not apply to the following ~~mill levies, expressed in mills per dollar of taxable valuation of property in a~~ park district:

1. ~~A park district levying~~ Levying a tax for an employees' pension fund according to sections 40-49-21 and 40-49-22 ~~and a park district~~ may levy a tax not exceeding the amount necessary for the district's annual contribution to the employees' pension fund.
2. ~~A park district levying a tax to establish a public recreation system in accordance with section 40-55-09 may levy a tax not exceeding two and five-tenths mills, or not more than eight and five-tenths mills if authorized as provided in section 40-55-09.~~
3. ~~A park district may levy a~~ Levying an additional tax approved by the electors providing for forestry activities in accordance with section 57-15-12.1 in an amount not exceeding ~~five~~ three mills.
4. ~~A park district levying a tax for airport purposes in accordance with section 57-15-37 may levy a tax not exceeding four mills.~~
5. ~~3.~~ 3. ~~A park district levying~~ Levying a tax for parks and recreational facilities in accordance with section 57-15-12.3 ~~may levy a tax in an amount not exceeding five mills.~~
6. ~~A park district levying a tax for a comprehensive health care program for district employees in accordance with section 40-49-12 may levy a tax not exceeding one mill.~~

~~Tax levy or mill levy limitations do not apply to any statute which expressly provides that taxes authorized to be levied therein are not subject to mill levy limitations provided by law.~~

SECTION 9. AMENDMENT. Section 57-15-12.3 of the North Dakota Century Code is amended and reenacted as follows:

57-15-12.3. Tax levy for parks and recreational facilities. A board of park commissioners established pursuant to chapter 40-49 may levy taxes annually not exceeding the limitation in subsection ~~5~~ 3 of section 57-15-12.2 for a fund for the purpose of acquiring real estate as a site for public parks, construction of recreational facilities, renovation and repair of recreational facilities, and the furnishing of recreational facilities. The tax is to be levied, spread, and collected in the same manner as are other taxes in the park district. The question of whether the levy is to be discontinued must be submitted to the qualified electors at the next regular election upon petition of twenty-five percent or more of the qualified electors voting in the last regular park district election, if the petition is filed not less than sixty days before the election. If the majority of the qualified electors voting on the question vote to discontinue the levy, it may not again be levied without a majority vote of the

qualified electors voting on the question at a later regular election on the question of relieving the tax, which question may be submitted upon petition as above provided or by decision of the governing board.

²⁵² **SECTION 10. AMENDMENT.** Section 57-15-28.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-28.1. Exceptions to tax levy limitations in political subdivisions.

The tax levy limitations specified by law do not apply to the following mill levies, expressed in mills per dollar of taxable valuation of property in the political subdivision. For purposes of this section, "political subdivision" has the same meaning as in section 32-12.1-02.

1. A political subdivision, except a park district, levying a tax for the control of pests in accordance with section 4-33-11 may levy a tax not exceeding one mill.
2. A political subdivision, except a school district or park district, levying a tax for an insurance reserve fund according to section 32-12.1-08 may levy a tax not exceeding five mills.
3. A political subdivision, except a school district, levying a tax for the payment of a judgment in accordance with section 32-12.1-11 may levy a tax not exceeding five mills.
4. A political subdivision levying a tax for railroad purposes in accordance with section 49-17.2-21 may levy a tax not exceeding four mills.
5. A political subdivision, except a school district or county, levying a tax for old-age and survivors' insurance according to section 52-09-08, for social security, or for an employee retirement program established by the governing body, or for any combination of those purposes, may levy a tax not exceeding thirty mills.
6. A county levying a tax for comprehensive health care insurance employee benefit programs in accordance with section 52-09-08 may levy a tax not exceeding four mills.

~~Additionally, tax levy limitations do not apply to taxes levied pursuant to any statute which expressly provides that the taxes authorized to be levied therein are not subject to mill levy limitations provided by law.~~

SECTION 11. AMENDMENT. Section 57-15-36 of the North Dakota Century Code is amended and reenacted as follows:

57-15-36. Tax levy for airport purposes. In cities supporting airports for which no levy has been made by a ~~park board or other~~ taxing district within the corporate limits of such city, a levy not exceeding the limitation in subsection 18 of section 57-15-10 may be made for such purposes.

²⁵² Section 57-15-28.1 was also amended by section 3 of House Bill No. 1135, chapter 458.

SECTION 12. AMENDMENT. Section 57-15-60 of the North Dakota Century Code is amended and reenacted as follows:

57-15-60. Authorization of tax levy for programs and activities for handicapped persons - Elections to authorize or remove the levy - Handicapped person programs and activities.

1. The board of county commissioners of any county ~~is hereby authorized to~~ may levy a tax, or if no levy is made by the board of county commissioners, the governing body of any city ~~or park district~~ in the county ~~is authorized to~~ may levy a tax, in addition to all levies now authorized by law, for the purpose of establishing or maintaining programs and activities for handicapped persons, including recreational and other leisure-time activities and informational, health, welfare, transportation, counseling, and referral services. If the tax authorized by this section is levied by the board of county commissioners, any existing levy under this section by a city ~~or park district~~ in the county is void for subsequent taxable years. The removal of the levy is not subject to the requirements of subsection 3. This tax may not exceed the limitation in subsection 33 of section 57-15-06.7 and subsection 29 of section 57-15-10. The proceeds of the tax must be kept in a separate fund and used exclusively for the public purposes provided for in this section. This levy is in addition to any moneys expended by the board of county commissioners pursuant to section 11-11-65 or by the governing body of any city or park district pursuant to section 40-05-20.
2. The levy authorized by this section may be used to fund an intergovernmental program under a joint powers agreement pursuant to chapter 54-40 but may not be used to defray any expenses of any organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the board of county commissioners or the governing body of the city or park district in regard to the manner in which the funds will be expended and the services will be provided. An organization or agency that receives funds under this section must be reviewed or approved annually by the board of county commissioners or the governing body of the city or park district to determine its eligibility to receive funds under this section.
3. The levy authorized by this section may be imposed or removed only by a vote of a majority of the qualified electors voting on the question in an election in the county, city, or park district. The governing body shall put the issue before the qualified electors either on its own motion or when a petition in writing, signed by qualified electors of the county or city equal in number to at least ten percent of the total vote cast in the county or city for the office of governor of the state at the last general election, is presented to that governing body. A park district may levy a tax annually within the general fund levy authority of section 57-15-12 for the purpose of establishing or maintaining programs and activities for handicapped persons.

SECTION 13. REPEAL. Section 57-15-37 of the North Dakota Century Code is repealed.

SECTION 14. EFFECTIVE DATE. Except as otherwise provided in this Act, this Act is effective for taxable years beginning after December 31, 2000.

Approved March 20, 2001

Filed March 20, 2001

CHAPTER 511

HOUSE BILL NO. 1405 (Representatives Severson, Pollert) (Senator Tallackson)

AMBULANCE SERVICE TAX LEVY LIMITATION

AN ACT to amend and reenact subsection 23 of section 57-15-06.7, subsection 7 of section 57-15-20.2, sections 57-15-26.5, and 57-15-51 of the North Dakota Century Code, relating to the county, city, township, and rural ambulance service district tax levy limitation for ambulance services; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵³ **SECTION 1. AMENDMENT.** Subsection 23 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

23. A county levying a tax for county ambulance service according to section 57-15-50 may levy a tax not exceeding ~~five~~ ten mills.

²⁵⁴ **SECTION 2. AMENDMENT.** Subsection 7 of section 57-15-20.2 of the North Dakota Century Code is amended and reenacted as follows:

7. A township levying a tax for ambulance service in accordance with section 57-15-51.1 may levy a tax not exceeding ~~five~~ ten mills.

SECTION 3. AMENDMENT. Section 57-15-26.5 of the North Dakota Century Code is amended and reenacted as follows:

57-15-26.5. General tax levy of rural ambulance service districts. A rural ambulance service district may levy, in accordance with chapter 11-28.3, a tax not exceeding ~~five~~ ten mills on the taxable value of property within the district.

²⁵⁵ **SECTION 4. AMENDMENT.** Section 57-15-51 of the North Dakota Century Code is amended and reenacted as follows:

57-15-51. Levy authorized for city ambulance service. Upon petition of ten percent of the number of qualified electors of the city voting in the last election for governor or upon its own motion, the governing body of ~~each a city in this state~~ shall levy annually a tax of not to exceed ~~five~~ ten mills upon its taxable valuation, for the

²⁵³ Section 57-15-06.7 was also amended by section 2 of House Bill No. 1135, chapter 458, and section 15 of House Bill No. 1202, chapter 246.

²⁵⁴ Section 57-15-20.2 was amended by section 16 of House Bill No. 1202, chapter 246, section 1 of Senate Bill No. 2328, chapter 553, and section 2 of Senate Bill No. 2334, chapter 513.

²⁵⁵ Section 57-15-51 was also amended by section 18 of House Bill No. 1202, chapter 246.

purpose of subsidizing city ambulance services; provided, that such tax must be approved by a majority of the qualified electors of the city voting on the question at a regular or special city election. Whenever a tax for county ambulance services is levied by a county, any city levying a tax for, or subsidizing city ambulance services, shall upon written application to the county board of such county be exempted from such county tax levy. The city may set aside, as a depreciation expense, up to ten percent of its annual ambulance service operating or subsidization budget in a dedicated ambulance sinking fund, deposited with the auditor for replacement of equipment and ambulances. The ten percent ambulance sinking fund may be in addition to the actual annual ambulance budget but the total of the annual ambulance budget and the annual ten percent ambulance fund may not exceed the approved mill levy.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 21, 2001

Filed March 21, 2001

CHAPTER 512

SENATE BILL NO. 2086

(Education Committee)

(At the request of the Municipal Bond Bank)

ASBESTOS ABATEMENT AND LEAD PAINT REMOVAL

AN ACT to amend and reenact section 57-15-17.1 of the North Dakota Century Code, relating to multiyear asbestos abatement and lead paint removal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-17.1 of the North Dakota Century Code is amended and reenacted as follows:

57-15-17.1. School board levies - Multiyear asbestos abatement, required - Lead paint removal - Required remodeling, and alternative - Alternative education program levy by school district programs.

1. The governing body of any public school district may by resolution adopted by a two-thirds vote of the school board dedicate a tax levy for purposes of this section of not exceeding fifteen mills on the dollar of taxable valuation of property within the district for a period not longer than fifteen years. The school board may authorize and issue general obligation bonds to be paid from the proceeds of this dedicated levy for the purpose of:
 - a. Providing funds for the removal of asbestos or lead paint substances from school buildings or the abatement of asbestos or lead paint substances in school buildings under any other method approved by the United States environmental protection agency and for any repair, replacement, or remodeling that results from removal or abatement of asbestos substances;
 - b. 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;
 - c. Any remodeling required to meet requirements set by the state fire marshal during the inspection of a public school; and
 - d. Providing alternative education programs.
2. All revenue accruing from the levy under this section, except revenue deposited as allowed by subsections 3 and 4, must be placed in a separate fund known as the asbestos and lead paint abatement fund and must be accounted for within the capital projects fund group and disbursements must be made from such funds within this fund group for the purpose of asbestos or lead paint abatement.
3. All revenue accruing from up to five mills of the fifteen mill levy under this section must be placed in a separate fund known as the required remodeling fund and must be accounted for within the capital projects

fund group and disbursements must be made from such funds within this fund group for the purpose of required remodeling, as set forth in subsection 1.

4. All revenue accruing from up to ten mills of the fifteen-mill levy under this section may be placed in a separate fund known as the alternative education program fund. Disbursement may be made from the fund for the purpose of providing an alternative education program but may not be used to construct or remodel facilities used to accommodate an alternative education program.
5. Any moneys remaining in the asbestos and lead paint abatement fund after completion of the principal and interest payments for any bonds issued for any school asbestos or lead paint abatement project, any funds remaining in the required remodeling fund after completion of the remodeling projects, and any funds remaining in the alternative education program fund at the termination of the program must be transferred to the general fund of the school district upon the order of the school board.

Approved April 24, 2001

Filed April 24, 2001

CHAPTER 513

SENATE BILL NO. 2334

(Senators O'Connell, Flakoll, Tollefson)
(Representatives Hunskor, M. Klein, Koppelman)

TOWNSHIP MOWING AND SNOW REMOVAL LEVY USE

AN ACT to amend and reenact section 57-15-19.6 and subsection 5 of section 57-15-20.2 of the North Dakota Century Code, relating to use of funds under the township levy for mowing and snow removal equipment for expenses of mowing and snow removal; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-19.6 of the North Dakota Century Code is amended and reenacted as follows:

57-15-19.6. Township levy for mowing or snow removal ~~equipment~~. The electors of each township at the annual meeting may levy not exceeding the limitation in subsection 5 of section 57-15-20.2 for the purpose of ~~buying and operating~~ mowing or snow removal ~~equipment~~. This tax levy may be made only if notice of the question of the approval of such levy has been included with or upon the notice of the annual meeting provided for in section 58-04-01.

²⁵⁶ **SECTION 2. AMENDMENT.** Subsection 5 of section 57-15-20.2 of the North Dakota Century Code is amended and reenacted as follows:

5. A township levying a tax for mowing or snow removal ~~equipment~~ in accordance with section 57-15-19.6 may levy a tax not exceeding three mills.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 21, 2001

Filed March 21, 2001

²⁵⁶ Section 57-15-20.2 was also amended by section 16 of House Bill No. 1202, chapter 246, section 2 of House Bill No. 1405, chapter 511, and section 1 of Senate Bill No. 2328, chapter 553.

CHAPTER 514**SENATE BILL NO. 2062**

(Finance and Taxation Committee)
(At the request of the State Tax Commissioner)

TAX LIEN NOTICE INFORMATION

AN ACT to amend and reenact section 57-20-26 of the North Dakota Century Code, relating to notice of tax lien information requirements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-20-26 of the North Dakota Century Code is amended and reenacted as follows:

57-20-26. Treasurer to give notice of tax lien by mail. Between the first and fifteenth of November of each year, the county treasurer shall mail to each owner of any lot or tract of land for which taxes are delinquent a notice giving the legal description of that lot or tract and stating that the taxes are delinquent and constitute a lien against the property. The notice must advise the owner that unless the delinquent taxes and special assessments with penalty, simple interest at the rate of twelve percent per annum from and after January first following the year in which the taxes become due and payable, and costs established under subsection 5 of section 57-28-04 are paid by October first of the fourth year following the year in which the taxes became delinquent, the county auditor will foreclose on the tax lien and issue a tax deed to the county.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxes that become due after December 31, 1999.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 515

SENATE BILL NO. 2059

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

REAL ESTATE TAX COLLECTION AND TAX DEEDS

AN ACT to create and enact a new section to chapter 57-20 and section 57-28-09.1 of the North Dakota Century Code, relating to collection of real estate taxes and the form of a tax deed; to amend and reenact sections 23-35-07, 57-23-05, 57-28-07, and 57-45-11 of the North Dakota Century Code, relating to the proration of health district funds, filing of an application for abatement, notice of foreclosure of tax lien, and limitation of action against a tax deed; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-35-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-35-07. Health district funds.

1. A district board of health shall prepare a budget for the next fiscal year at the time at which and in the manner in which a county budget is adopted and shall submit this budget to the joint board of county commissioners for approval. The amount budgeted and approved must be prorated in health districts composed of more than one county among the various counties in the health district according to the ~~assessed~~ taxable valuation of the respective counties in the health district. For the purpose of this section, "prorated" means that each member county's contribution must be based on an equalized mill levy throughout the district. Within ten days after approval by the joint board of county commissioners, the district board of health shall certify the budget to the respective county auditors and the budget must be included in the levies of the counties. The budget may not exceed the amount that can be raised by a levy of five mills on the taxable valuation, subject to public hearing in each county in the health district at least fifteen days before an action taken by the joint board of county commissioners. Action taken by the joint board of county commissioners must be based on the record, including comments received at the public hearing. A levy under this section is not subject to the limitation on the county tax levy for general and special county purposes. The amount derived by a levy under this section must be placed in the health district fund. The health district fund must be deposited with and disbursed by the treasurer of the district board of health. Each county in a health district quarterly shall remit and make settlements with the treasurer. Any funds remaining in the fund at the end of any fiscal year may be carried over to the next fiscal year.
2. The district board of health, or the president and secretary of the board when authorized or delegated by the board, shall audit all claims against the health district fund. The treasurer shall pay all claims from

the health district fund. The district board of health shall approve or ratify all claims at the board's quarterly meetings.

SECTION 2. A new section to chapter 57-20 of the North Dakota Century Code is created and enacted as follows:

Collection of real estate taxes on leasehold or other possessory interest.

1. If any holder of a leasehold or other possessory interest in exempt real property neglects or refuses to pay any real estate taxes legally assessed and levied on that property at the time required by law for the payment of real property taxes, the taxes shall constitute a personal charge against the holder of the lease or other possessory interest from and after the day they become due, and all of the provisions of law with respect to the enforcement of collection of personal property taxes are applicable.
2. For property subject to assessment under the provisions of subsection 2 of section 57-02-26, taxes upon the property constitute a personal charge against the lease or easement holder from and after the day they become due, and all of the provisions of law with respect to the enforcement of collection of personal property taxes are applicable.

SECTION 3. AMENDMENT. Section 57-23-05 of the North Dakota Century Code is amended and reenacted as follows:

57-23-05. Application for abatement or refund - Who may make. An application for an abatement or refund must be in writing and must be filed in duplicate with the county auditor. It must state the grounds relied upon for such abatement or refund and give the post-office address of the applicant. The county auditor shall note the date of filing, shall file the same, and, within five business days of the filing date, shall present a copy to the city auditor or the township clerk if the applicant's assessed property is within a city or an organized township. The county auditor shall present the application to the board of county commissioners at its next regular meeting. The county auditor shall give the applicant notice by mail of the time and place of hearing on any abatement or refund not less than ten days prior to such hearing.

Any person having any estate, right, title, or interest in or lien upon any real property who claims that the assessment made or the tax levied against the same is excessive or illegal, in whole or in part, is entitled to make an application for abatement, refund, or compromise, as the case may be, and have such application granted if the facts upon which the application is based bring it within the provisions of this chapter for abatement, refund, or compromise. In addition, if an abatement is based upon any of the grounds specified in section 57-23-04 and if the application for abatement will not result in a refund of tax or a compromise of a tax, the abatement application may be signed and submitted by either the county auditor or the assessor who made the assessment resulting in the tax specified in the abatement application.

SECTION 4. AMENDMENT. Section 57-28-07 of the North Dakota Century Code is amended and reenacted as follows:

57-28-07. Form of notice for publication. The notice of the expiration of the period of redemption foreclosure of tax lien to be served by publication must be substantially in the following form:

I, _____, county auditor, of _____ County, North Dakota, give notice that the real estate hereinafter described has a lien for delinquent taxes against it for the year _____, and unless ~~such~~ the tax and special assessments, with interest, penalties, and cost of foreclosure action are paid, on or before October first after the date of this notice, the ~~same~~ real estate will become the absolute property in fee of this county, subject, ~~however,~~ to the lien for installments of special assessments certified or to be certified to the county auditor or which may become due subsequent to the time of service of this notice, and the former owner ~~thereof~~, mortgagees, lienholders, and other ~~persons~~ interested persons therein will be forever foreclosed and barred from asserting any further rights to the real estate ~~whatsoever~~. The following is a list of the real estate on which the tax lien will be foreclosed on October first. Opposite each description of the real estate appears any street address of the property, the name of the owner of the record title ~~thereof~~, and the amount which must be paid to satisfy the tax lien. (List descriptions, names of owners, and amount necessary to satisfy the tax lien.)

Given pursuant to authority of law on _____, _____.

The failure to include the street address in the notice does not affect the validity of the notice.

SECTION 5. Section 57-28-09.1 of the North Dakota Century Code is created and enacted as follows:

57-28-09.1. Form of tax deed. A tax deed must be substantially in the following form:

TAX DEED

This deed is made by _____ (name of county auditor), county auditor of _____ County, North Dakota, in the name of the state to _____ (name of county) County, as provided by the laws of the state of North Dakota:

Whereas, there was assessed for _____ (year) the following real property: _____ (legal description of the property); and

Whereas, the taxes for _____ (year) levied against the property amounted to \$ _____; and

Whereas, the taxes were not paid and a property tax lien for the payment of the taxes attached; and

Whereas, notice was given to interested parties under chapter 57-28 of foreclosure of the tax lien and that the issuance of a tax deed was pending; and

Whereas, the property tax lien has not been satisfied by _____ (name of former owner) or any other person entitled to satisfy it.

Now, therefore, I _____ (auditor's name), county auditor of _____ County, North Dakota, in the name of the state, hereby grant to _____ (name of

county) County, all the property situated in _____ County, North Dakota,
described in this document.

Witness my hand on this date _____ (date, including year).

_____, County Auditor
_____, County, North Dakota

SECTION 6. AMENDMENT. Section 57-45-11 of the North Dakota Century Code is amended and reenacted as follows:

57-45-11. Limitation of action against tax deed. Any person having or claiming title to or a lien or encumbrance upon any land, whether in that person's possession or the possession of another, or vacant or unoccupied, may commence and maintain an action against any person, county, or state claiming any title to or interest in ~~such lands~~ the land, or a lien upon the ~~same land~~, adversely to the person by or through any tax deed, to test the validity of the ~~tax sale, tax certificate, or tax deed~~, or to quiet the title to ~~said~~ the land as against the claims of ~~such the~~ such the adverse claimant, or to remove the cloud from the title arising from ~~such the~~ such the tax deed. ~~No~~ An action ~~nor~~ or defense based upon the invalidity of ~~any such a~~ any such a tax deed may not be commenced or interposed after three years from the issuance of a tax deed unless ~~such the~~ such the tax deed is void by reason of jurisdictional defects. The holder of a tax deed may maintain an action to establish the validity thereof of the tax deed or to quiet title to said lands, the land and the holder of a tax deed may demand the possession of such lands the land.

SECTION 7. EFFECTIVE DATE. Sections 2 and 5 of this Act are effective for taxes that become due after December 31, 1999. The remainder of this Act is effective for taxable years beginning after December 31, 2000.

Approved March 19, 2001

Filed March 19, 2001

CHAPTER 516

HOUSE BILL NO. 1206 (Representative Klemin)

ABATEMENT HEARINGS

AN ACT to amend and reenact subsection 2 of section 57-23-06 of the North Dakota Century Code, relating to the hearing on an application for the abatement or refund of taxes upon real property; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-23-06 of the North Dakota Century Code is amended and reenacted as follows:

2. At the next regular meeting of the board of county commissioners following the filing of an application for abatement or, if forthcoming, at the next regular meeting of the board of county commissioners following transmittal of the recommendations of the governing body of the municipality, the applicant may appear, in person or by a representative or attorney, and may present such evidence as may bear on the application. The applicant shall furnish any additional information or evidence requested by the board of county commissioners. The recommendations of the governing body of the municipality in which such assessed property is located must be endorsed upon or attached to every application for an abatement or refund, and the board of county commissioners shall give consideration to such recommendations. The board of county commissioners, by a majority vote, either shall approve or reject the application, in whole or in part. If rejected, ~~a statement of the reasons for such rejection~~ in whole or in part, a written explanation of the rationale for the decision, signed by the chairman of the board, must be attached to the application, and a copy thereof must be mailed by the county auditor to the applicant at the post-office address specified in the application.

SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying all aspects of improvements by special assessment and property tax assessment and abatements, to include a determination of the true and full value of subsidized housing for property tax assessments, and the homestead tax valuation for senior citizens. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 517

SENATE BILL NO. 2151

(Government and Veterans Affairs Committee)
(At the request of the Office of Management and Budget)

FIXED ASSET MINIMUM REPORTING VALUE

AN ACT to amend and reenact section 54-27-21 of the North Dakota Century Code, relating to the minimum value for reporting fixed assets; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27-21 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-27-21. Fixed asset minimum reporting value. All state departments, agencies, boards, bureaus, commissions, industries, and institutions shall include all fixed assets under their control in their financial statements, except those having a value of ~~seven hundred and fifty~~ five thousand dollars or less. The state auditor is authorized to provide for the written exemption of specific fixed assets having a value of more than ~~seven hundred and fifty~~ five thousand dollars when ~~such an~~ an exemption is justified upon generally accepted accounting principles.

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

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 518

SENATE BILL NO. 2286

(Senators Fischer, Cook, Lee)
(Representatives Aarsvold, Delmore, Hawken)

TAX DEEDS AND TAX LIENS

AN ACT to create and enact a new section to chapter 57-28 of the North Dakota Century Code, relating to liens against other property for costs incurred by a county in tax foreclosures; to amend and reenact section 57-28-09 of the North Dakota Century Code, relating to issuance of tax deeds to political subdivisions on property forfeited in tax foreclosures; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 or, 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. While the county or, 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 or, 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.

SECTION 2. A new section to chapter 57-28 of the North Dakota Century Code is created and enacted as follows:

County lien for costs of improvement to distressed property forfeited in tax foreclosure.

1. If property sold by the county under this chapter is sold for less than the total amount of the taxes due and the costs to improve salability of the property which were incurred by the county in cleanup, repairs, demolition, or other action necessary because of damage, neglect, or waste by the prior owner, those costs incurred by the county to improve salability which were not recovered by the county from the sale constitute a lien on any real property owned, or later acquired, in the county by that prior owner.

2. The county auditor shall extend and enter upon the tax list of real estate then in the hands of the county treasurer, opposite the description of real estate designated by the board of county commissioners which belongs to the prior owner, the year for which an obligation to the county exists under this section and the amount of that obligation. The entry must be made without regard to any prior payment of real estate taxes on those properties and the treasurer may not thereafter issue any receipt in full for real estate taxes on those properties without making collection at the same time of the obligation under this section. A taxpayer holding a specific superior lien on those properties ahead of a lien under this section is entitled to tax receipts without regard to nonpayment of obligations under this section.

SECTION 3. EFFECTIVE DATE. This Act is effective for property for which a tax deed is issued after December 31, 2000.

Approved March 16, 2001

Filed March 16, 2001

CHAPTER 519

HOUSE BILL NO. 1479

(Representative R. Kelsch)

(Approved by the Delayed Bills Committee)

MOBILE TELECOMMUNICATIONS TAXATION

AN ACT to create and enact chapter 57-34.1 of the North Dakota Century Code, relating to the taxation of mobile telecommunications; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 57-34.1 of the North Dakota Century Code is created and enacted as follows:

57-34.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Charges for mobile telecommunications services" means any charge for or associated with the provision of commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for or associated with a service provided as an adjunct to a commercial mobile radio service which is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.
2. "Customer" means the person that contracts with the home service provider for mobile telecommunications services or for the purpose of determining the place of primary use, if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service. The term does not include a reseller of mobile telecommunications service or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.
3. "Enhanced zip code" means a United States postal zip code of nine or more digits.
4. "Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.
5. "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.
6. "Mobile telecommunications service" means commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

7. "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer and within the licensed service area of the home service provider.
8. "Prepaid telephone calling service" means the right to purchase exclusively telecommunications services that must be paid for in advance which enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.
9. "Reseller" means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service and does not include a serving carrier with which a home service provider arranges for the services to its customers outside the home service provider's licensed service area.
10. "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer outside a home service provider's or reseller's licensed service area.
11. "Taxing jurisdiction" means this state or any political subdivision within this state, including those operating under a home rule charter, with the authority to impose a tax, charge, or fee.

57-34.1-02. Application.

1. This chapter applies to any tax, charge, or fee levied by a taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunications services, regardless of whether the tax, charge, or fee is imposed on the vendor or customer of the service and regardless of the terminology used to describe the tax, charge, or fee.
2. This chapter does not apply to:
 - a. Any tax, charge, or fee levied upon or measured by the net income, capital stock, net worth, or property value of the provider of mobile telecommunications service.
 - b. Any tax, charge, or fee that is applied to an equitably apportioned amount that is not determined on a transactional basis.
 - c. Any tax, charge, or fee that represents compensation for a mobile telecommunications service provider's use of public rights of way or other public property, provided that the tax, charge, or fee is not levied by the taxing jurisdiction as a fixed charge for each customer or measured by gross amounts charged to customers for mobile telecommunication services.
 - d. Any generally applicable business and occupation tax that is imposed by this state, is applied to gross receipts or gross

proceeds, is the legal liability of the home service provider, and that statutorily allows the home service provider to elect to use the sourcing method required in this chapter.

- e. Any fee related to obligations under section 254 of the Communications Act of 1934.
 - f. Any tax, charge, or fee imposed by the federal communications commission.
3. The provisions of this chapter:
- a. Do not apply to the determination of the taxing situs of prepaid telephone calling services.
 - b. Do not affect the taxability of either the initial sale of mobile telecommunications services or subsequent resale of the services, whether as sales of the services alone or as a part of a bundled product, if the Internet Tax Freedom Act [Pub. L. 105-277; 112 Stat. 2681 et seq.] precludes a taxing jurisdiction from subjecting the charges of the sale of the services to a tax, charge, or fee.
 - c. Do not apply to the determination of the taxing situs of air-ground radio-telephone service as defined in section 22.99 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

57-34.1-03. Sourcing rules for mobile telecommunications services.

Notwithstanding any other provision of law or any ordinance or resolution of a political subdivision, including a political subdivision operating under a home rule charter, mobile telecommunications services provided in a taxing jurisdiction to a customer, the charges for which are billed by or for the customer's home service provider, are deemed to be provided by the customer's home service provider. All charges for mobile telecommunications services that are deemed to be provided by the customer's home service provider under this chapter are authorized to be subjected to tax, charge, or fee by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, and no other taxing jurisdiction may impose taxes, charges, or fees on charges for the mobile telecommunications services.

57-34.1-04. Electronic data base.

1. A home service provider is to be held harmless from any tax, charge, or fee liability in this state that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to subsection 4, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within the enhanced zip code for use in taxing the activity for the enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with subsection 4 is in compliance with this subsection. For purposes of this subsection, there is a

rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:

- a. Expended reasonable resources to implement and maintain an appropriately detailed electronic data base of street address assignments to taxing jurisdictions;
 - b. Implemented and maintained reasonable internal controls to promptly correct misassignments of street addresses to taxing jurisdictions; and
 - c. Used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of the data base.
2. A home service provider is responsible for obtaining and maintaining the customer's place of primary use. Subject to subsection 4 and if the home service provider's reliance on information provided by its customer is in good faith, a taxing jurisdiction shall allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider's customer and not hold a home service provider liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge.
 3. Except as provided in subsection 4, a taxing jurisdiction shall allow a home service provider to treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect on or before July 28, 2002, as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal of the service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.
 4. A taxing jurisdiction or the state on behalf of any taxing jurisdiction may:
 - a. Determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications services are remitted does not meet the definition of place of primary use and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination if the taxing jurisdiction making the determination is not the state, the taxing jurisdiction obtains the consent of all affected taxing jurisdictions within this state before giving the notice of determination, and before the taxing jurisdiction gives the notice of determination, the customer is given an opportunity to demonstrate in accordance with applicable state or local tax, charge, or fee administrative procedures that the address is the customer's place of primary use.
 - b. Determine that the assignment of a taxing jurisdiction by a home service provider under subsection 1 does not reflect the correct

taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination if the taxing jurisdiction making the determination is not the state, the taxing jurisdiction obtains the consent of all affected taxing jurisdictions within the state before giving the notice of determination and the home service provider is given an opportunity to demonstrate in accordance with applicable state or local tax, charge, or fee administrative procedures that the assignment reflects the correct taxing jurisdiction.

5. Nothing in this chapter modifies, impairs, supersedes, or authorizes the modification, impairment, or supersession of, any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.
6. If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable mobile telecommunications services may be subject to taxation unless the home service provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business.
7. If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the nontaxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for nontaxable mobile telecommunications services from taxable charges or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identifies the nontaxable charges.

57-34.1-05. Customer's procedures and remedies for correcting taxes and fees.

1. If a customer believes that an amount of tax, assignment of place of primary use, or taxing jurisdiction included on a billing is erroneous, the customer shall notify the home service provider in writing. The customer shall include in this written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction of the tax assignment, a description of the error asserted by the customer, and any other information the home service provider reasonably requires to process the request. Within sixty days of receiving a notice, the home service provider shall review its records and the electronic data base or enhanced zip code to determine the customer's taxing jurisdiction. If as a result of this review the home service provider finds that the amount of tax, assignment of place of primary use, or taxing jurisdiction is in error, the home service provider shall correct the error and refund or credit the amount of tax erroneously collected from the customer for a period of up to two years. If this review shows that the amount of tax, assignment of place of primary use, or taxing jurisdiction is correct, the home service provider shall provide a written explanation to the customer.

2. If the customer is dissatisfied with the response of the home service provider under this section, the customer may seek correction or refund from the taxing jurisdiction affected.
3. The procedure in this section is the sole and exclusive remedy available to customers seeking correction of assignment of place of primary use, taxing jurisdiction, a refund, or other compensation for taxes or fees erroneously collected by the home service provider.

57-34.1-06. Nonseverability. If a court of competent jurisdiction enters a final judgment on the merits that is based on federal law, is no longer subject to appeal, and substantially limits or impairs the essential elements of the Mobile Telecommunications Sourcing Act [Pub. L. 106-252; 114 Stat. 626], then the provisions of this chapter are invalid and have no legal effect as of the date of entry of the judgment.

SECTION 2. EFFECTIVE DATE. This Act becomes effective for customer bills issued on or after August 1, 2002.

Approved April 28, 2001
Filed April 28, 2001

CHAPTER 520

SENATE BILL NO. 2408

(Senators Stenehjem, Tomac, Wardner)
(Representatives Carlson, Renner, Wald)

TOBACCO PRODUCTS TAX

AN ACT to amend and reenact sections 57-36-01, 57-36-09, 57-36-25, 57-36-26, 57-36-28, 57-36-29, and 57-36-33 of the North Dakota Century Code, relating to the tobacco products tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-01 of the North Dakota Century Code is amended and reenacted as follows:

57-36-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Chewing tobacco" means any leaf tobacco that is intended to be placed in the mouth.
2. "Cigar" means any roll of tobacco wrapped in tobacco.
- ~~2.~~ 3. "Cigarette" means any roll for smoking made wholly or in part of tobacco and encased in any material except tobacco.
- ~~3.~~ 4. "Consumer" means any person who has title to or possession of cigarettes, ~~snuff~~, cigars, pipe tobacco, or other tobacco products in storage, for use or other consumption in this state.
4. 5. "Dealer" includes any person other than a distributor who is engaged in the business of selling cigarettes, cigarette papers, cigars, pipe tobacco, ~~snuff~~, or other tobacco products.
- ~~5.~~ 6. "Distributor" includes any person engaged in the business of producing or manufacturing cigarettes, cigarette papers, cigars, pipe tobacco, ~~snuff~~, or other tobacco products, or importing into this state cigarettes, cigarette papers, cigars, pipe tobacco, ~~snuff~~, or other tobacco products, for the purpose of distribution and sale thereof to dealers and retailers.
- ~~6.~~ 7. "Licensed dealer" means a dealer licensed under the provisions of this chapter.
- ~~7.~~ 8. "Licensed distributor" means a distributor licensed under the provisions of this chapter.
- ~~8.~~ 9. "Other tobacco products" means any product except cigarettes, cigarette papers, cigars, or snuff which is made up or composed of tobacco, in whole or in part and chewing tobacco.
- ~~9.~~ 10. "Person" means any individual, firm, fiduciary, partnership, corporation, limited liability company, trust, or association however formed.

11. "Pipe tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.
40. 12. "Sale" or "sell" applies to gifts, exchanges, and barter.
13. "Snuff" means any finely cut, ground, or powdered tobacco that is intended to be placed in the mouth.
44. 14. "Storage" means any keeping or retention of cigarettes, ~~snuff~~, cigars, pipe tobacco, or other tobacco products for use or consumption in this state.
42. 15. "Use" means the exercise of any right or power incidental to the ownership or possession of cigarettes, ~~snuff~~, cigars, pipe tobacco, or other tobacco products.

SECTION 2. AMENDMENT. Section 57-36-09 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09. Records to be kept by distributors and reports made - Penalty. Distributors shall keep records and make reports relating to purchases and sales of cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, or other tobacco products made by them, and must be punished for failure so to do, as follows:

1. Each distributor who shall dispose of cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, or other tobacco products shall keep and preserve for one year all invoices of cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, or other tobacco products purchased by the distributor and shall permit the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner, to inspect and examine all taxable merchandise, invoices, receipts, books, papers, and memoranda as may be deemed necessary by the state tax commissioner, and assistants, authorized agents, or representatives of the state tax commissioner in determining the amount of the tax as may be yet due. Each person selling or otherwise disposing of cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, or other tobacco products as a distributor shall keep a record of all sales made within the state showing the name and address of the purchaser and the date of sale. For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer.
2. On or before the fifteenth day of each month, each licensed distributor, on such form as the state tax commissioner shall prescribe, shall report to the tax commissioner all purchases and sales of cigarettes, cigarette papers, ~~snuff~~, cigars, pipe tobacco, or other tobacco products made from or to any persons either within or without this state during the preceding month. For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer. The tax levied by this chapter is payable monthly and must be remitted to the tax commissioner by each licensed distributor on or before the fifteenth day of the month following the monthly period.
3. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a

penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

SECTION 3. AMENDMENT. Section 57-36-25 of the North Dakota Century Code is amended and reenacted as follows:

57-36-25. Cigars, snuff, and other tobacco products and pipe tobacco - Excise tax on wholesale purchase price - Other tobacco products - Excise tax on weight - Penalty - Reports - Collection - Allocation of revenue.

1. There is hereby levied and assessed upon all cigars, ~~snuff, and other tobacco products~~ and pipe tobacco sold in this state an excise tax at the rate of twenty-eight percent of the wholesale purchase price at which such cigars, ~~snuff, and other tobacco products~~ and pipe tobacco are purchased by distributors. For the purposes of this section, the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, ~~snuff, or other tobacco products~~ or pipe tobacco to a distributor exclusive of any discount or other reduction.
2. There is levied and assessed upon all other tobacco products sold in this state an excise tax at the following rates:
 - a. Upon each can or package of snuff, sixty cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.
 - b. On chewing tobacco, sixteen cents per ounce and a proportionate tax at the like rate on all fractional parts of an ounce.

For purposes of this subsection, the tax on other tobacco products is computed based on the net weight as listed by the manufacturer.

3. The proceeds of ~~such tax~~ the taxes imposed under this section, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or before the fifteenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the fifteenth day of the month following the month for which the returns are filed.
2. 4. Any person failing to file any prescribed form or return or to pay any tax within the time required or permitted by this section is subject to a penalty of five percent of the amount of tax due or five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

- ~~3.~~ 5. All moneys received by the tax commissioner under provisions of this section shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.
4. Repealed by S.L. 1975, ch. 406, § 673.

SECTION 4. AMENDMENT. Section 57-36-26 of the North Dakota Century Code is amended and reenacted as follows:

57-36-26. Cigars, snuff, pipe tobacco, and other tobacco products - Excise tax payable by dealers - Reports - Penalties - Collection - Allocation of revenue.

1. There is hereby levied and assessed upon all cigars, ~~snuff, and other tobacco products,~~ and pipe tobacco purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of twenty-eight percent of the wholesale purchase price, and upon all other tobacco products purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rates indicated in section 57-36-25, at the time the products were brought into this state. For the purposes of this section, the term "wholesale purchase price" means the established price for which a manufacturer sells cigars, ~~snuff, or other tobacco products or pipe tobacco~~ to a distributor exclusive of any discount or other reduction. However, the dealer may elect to report and remit the tax on the cost price of the products to the dealer rather than on the wholesale purchase price. The proceeds of the tax, together with the forms of return and in accordance with any rules and regulations the tax commissioner may prescribe, must be remitted to the tax commissioner by the dealer on a monthly basis on or before the fifteenth day of the month following the monthly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit that remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.
2. If cigars ~~or snuff,~~ pipe tobacco, or other tobacco products have been subjected already to a tax by any other state in respect to their sale in an amount less than the tax imposed by this section, the provisions of this section apply, but at a rate measured by the difference only between the rate fixed in this section and the rate by which the previous tax upon the sale was computed. If the tax imposed in the other state is twenty percent of the wholesale purchase price or more, then no tax is due on the article. The provisions of this subsection apply only if the other state allows a tax credit with respect to the excise tax on cigars, ~~snuff, and,~~ pipe tobacco, or other tobacco products imposed by this state which is substantially similar in effect to the credit allowed by this subsection.
3. Any person failing to file any prescribed forms of return or to pay any tax within the time required by this section is subject to a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, plus one percent of the tax for each month of delay or fraction

thereof excepting the month within which the return was required to be filed or the tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of the penalty. The penalty must be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.

4. All moneys received by the tax commissioner under the provisions of this section must be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.
5. ~~Repealed by S.L. 1975, ch. 406, § 673.~~

SECTION 5. AMENDMENT. Section 57-36-28 of the North Dakota Century Code is amended and reenacted as follows:

57-36-28. Consumer's use tax - Cigars, snuff, pipe tobacco, and other tobacco products - Reports - Remittances.

1. A tax is hereby imposed upon the use or storage by consumers of cigars; ~~snuff, pipe tobacco,~~ and other tobacco products in this state, and upon those consumers, at the ~~rate of twenty-eight percent of the cost to the consumer of these products~~ rates indicated in section 57-36-25.
2. This tax shall not apply if the tax imposed by section 57-36-25 or section 57-36-26 has been paid nor shall it apply to cigars; ~~snuff, pipe tobacco,~~ or other tobacco products exempt pursuant to section 57-36-24.
3. On or before the tenth day of each calendar quarter, every consumer who, during the preceding calendar quarter, has acquired title to or possession of cigars; ~~snuff, pipe tobacco,~~ or other tobacco products for use or storage in this state, upon which products the tax imposed by either section 57-36-25 or section 57-36-26 has not been paid, shall file a return with the tax commissioner showing the quantity of such products so acquired. For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer. The return shall be made upon a form furnished and prescribed by the tax commissioner and shall contain such other information as the tax commissioner may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it.
4. As soon as practicable after any return is filed, the tax commissioner shall examine the return and correct it, if necessary, according to the tax commissioner's best judgment and information.
5. In case any consumer required to pay the tax levied by this section fails to file a return or remit the tax as herein required, the tax commissioner shall have authority to make an assessment of tax against the consumer according to the tax commissioner's best judgment and information.
6. All of the provisions of this chapter relating to corrections of returns, deficiency assessments, protests thereto, hearings thereon, interest and penalties, and collections of taxes shall be applicable to consumers under this section in like manner as though set out in full herein.

SECTION 6. AMENDMENT. Section 57-36-29 of the North Dakota Century Code is amended and reenacted as follows:

57-36-29. Correction of errors.

1. If it appears that as a result of a mistake an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, then such amount becomes due under this chapter, and the amount must be credited or refunded to such person or firm by the tax commissioner.
2. Whenever a distributor destroys cigarettes, cigars, ~~snuff, and pipe tobacco, or~~ other tobacco products accidentally, or intentionally, because of staleness or other unfitness for sale, a credit or refund must be given to the wholesaler under the terms and conditions prescribed by the tax commissioner.

SECTION 7. AMENDMENT. Section 57-36-33 of the North Dakota Century Code is amended and reenacted as follows:

57-36-33. Penalties for violation of chapter. Except as otherwise provided in this chapter, any person who violates any provision of this chapter is guilty of a class A misdemeanor. All cigarettes, cigarette papers, ~~snuff, cigars, pipe tobacco,~~ or other tobacco products in the possession of the person or in the place of business of the person must be confiscated and forfeited to the state.

Approved March 29, 2001

Filed March 29, 2001

CHAPTER 521

HOUSE BILL NO. 1063

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

LLC MEMBER PERSONAL LIABILITY FOR UNPAID TAXES

AN ACT to amend and reenact sections 57-36-09.4, 57-38-60.2, 57-39.2-15.2, 57-40.2-15.1, 57-40.2-15.2, 57-43.1-17.3, 57-43.2-16.2, and 57-43.3-21 of the North Dakota Century Code, relating to the personal liability of members in a member-controlled limited liability company for unpaid tobacco products, income withholding, sales or use, motor vehicle fuel, importer for use, special fuels, and aviation fuel taxes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-09.4 of the North Dakota Century Code is amended and reenacted as follows:

57-36-09.4. Governor and manager liability.

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the ~~governors or~~ managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of ~~such~~ the returns and payments, are personally liable for ~~such~~ the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~ manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.
2. If the ~~governors or~~ managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual tobacco products tax liability of the limited liability company.

SECTION 2. AMENDMENT. Section 57-38-60.2 of the North Dakota Century Code is amended and reenacted as follows:

57-38-60.2. Governor and manager liability.

1. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the tax due, the ~~governors or~~ managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of the preparation of

~~such~~ the returns and payments are personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

2. If the governors ~~or~~, managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual income tax withholding liability of the limited liability company.

SECTION 3. AMENDMENT. Section 57-39.2-15.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-15.2. Governor and manager liability.

1. If a limited liability company required to hold a permit under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors ~~or~~, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of the returns and payments are personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.
2. If the governors ~~or~~, managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual sales tax liability of the limited liability company.

SECTION 4. AMENDMENT. Section 57-40.2-15.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-15.1. Corporate officer liability.

1. If a corporation fails for any reason to file the required returns or to pay the tax due under this chapter, the president, vice president, secretary, or treasurer of the corporation, jointly or severally, having control or supervision of, or charged with the responsibility for making the returns and payments are personally liable for the failure. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due. The sum due for the liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.

2. If the corporate officers, governors, ~~or~~ managers, or members of a member-controlled limited liability company elect not to be personally liable for the failure to file the required returns or to pay the tax due, the corporation or limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual use tax liability of the corporation or limited liability company.

SECTION 5. AMENDMENT. Section 57-40.2-15.2 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-15.2. Governor and manager liability. If a limited liability company fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor ~~or~~, manager, or member of a member-controlled limited liability company, jointly or severally charged with the responsibility of supervising the preparation of the returns and payments, is personally liable for the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The sum due for such a liability may be assessed and collected under the provisions of this chapter.

SECTION 6. AMENDMENT. Section 57-43.1-17.3 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-17.3. Governor and manager liability.

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governors ~~or~~, managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of ~~such~~ the returns and payments are personally liable for ~~such~~ the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~, manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.
2. If the governors ~~or~~, managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual motor vehicle fuel tax liability of the limited liability company.

SECTION 7. AMENDMENT. Section 57-43.2-16.2 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-16.2. Governor and manager liability.

1. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due

under this chapter, the governors or managers, or members of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of ~~such~~ the returns and payments are personally liable for ~~such~~ the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~ manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

2. If the governors or managers, or members elect not to be personally liable for the failure to file the required returns or to pay the tax due, the limited liability company must be required to make a cash deposit or post with the tax commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking provided for in this section must be in an amount equal to the estimated annual special fuel tax liability of the limited liability company.

SECTION 8. AMENDMENT. Section 57-43.3-21 of the North Dakota Century Code is amended and reenacted as follows:

57-43.3-21. Governor and manager liability. If a limited liability company holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, or member of a member-controlled limited liability company, jointly or severally, charged with the responsibility of supervising the preparation of ~~such~~ the returns and payments, is personally liable for ~~such~~ the failure. The dissolution of a limited liability company does not discharge a governor's ~~or~~ manager's, or member's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable periods beginning after December 31, 2000.

Approved March 14, 2001
Filed March 15, 2001

CHAPTER 522

SENATE BILL NO. 2252

(Senators Krauter, T. Mathern, Kringstad)
(Representatives Thorpe, Nottestad, Gulleson)

ADOPTION EXPENSE DEDUCTIONS

AN ACT to amend and reenact paragraph 5 of subdivision d of subsection 1 of section 57-38-01.2 and subsection 5 of section 57-38-30.3 of the North Dakota Century Code, relating to income tax deductions or credits for adoption expenses; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Paragraph 5 of subdivision d of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is amended and reenacted as follows:

- (5) Reduced by one thousand seven hundred fifty dollars for each child under the age of twenty-one years adopted by the taxpayer. The reduction under this paragraph may be claimed only by an adoptive parent of an adopted child and the child must qualify as a dependent of the adoptive parent for federal income tax purposes. The reduction may be claimed by only one spouse, for spouses filing separately under this chapter. The reduction provided by this paragraph may be claimed ~~only~~ for the taxable year in which the adoption becomes final and ~~the~~ any unused portion of the reduction may be carried forward by the taxpayer for up to five taxable years. The reduction does not apply to the adoption of children of the taxpayer's spouse.

²⁵⁷ **SECTION 2. AMENDMENT.** Subsection 5 of section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

5. For purposes of this section, "federal income tax liability" means the individual's, estate's, or trust's federal income tax computed for the taxable year under Internal Revenue Code sections 1 and 3, relating to the computation of the regular federal income tax before credits, including calculation and tax rate modifications prescribed under other provisions of the Internal Revenue Code, adjusted as follows:
 - a. Add the alternative minimum tax computed under Internal Revenue Code section 55;

²⁵⁷ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1399, chapter 526, section 1 of House Bill No. 1413, chapter 528, section 53 of Senate Bill No. 2032, chapter 488, and section 1 of Senate Bill No. 2386, chapter 527.

- b. Add the tax on a lump sum distribution computed under Internal Revenue Code section 402; however, this adjustment does not apply if the lump sum distribution is received while a nonresident of this state and is exempt from taxation by this state under federal law;
- c. Add the tax on an accumulation distribution of a trust computed under Internal Revenue Code section 667;
- d. Add the tax computed under Internal Revenue Code section 72(m)(5) on excess benefits received from a qualified plan under Internal Revenue Code section 401(a) or a qualified annuity under Internal Revenue Code section 403(a);
- e. Add the tax computed under Internal Revenue Code section 72(q)(1) on an early distribution from an annuity contract;
- f. Add the tax computed under Internal Revenue Code section 72(t)(1) on an early distribution from a qualified retirement plan;
- g. Add the tax computed under Internal Revenue Code section 4973(a) on excess contributions to an individual retirement account, medical savings account, and certain Internal Revenue Code section 403(b) and annuity contracts; however, this adjustment does not apply if the individual, estate, or trust is a nonresident of this state;
- h. Add the tax computed under Internal Revenue Code section 4974(a) on excess accumulations in a qualified retirement plan; however, this adjustment does not apply if the individual, estate, or trust is a nonresident of this state;
- i. Add the tax computed under Internal Revenue Code section 4980A on excess distributions from a qualified retirement plan; ~~and~~
- j. Subtract the credit for prior year minimum tax computed under Internal Revenue Code section 53; and
- k. Subtract the credit for qualified adoption expenses computed under Internal Revenue Code section 23, but not in an amount exceeding one thousand seven hundred fifty dollars.

Unless specifically provided for in this subsection, no federal income tax credit may be subtracted in determining the federal income tax liability for purposes of this section.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 523

SENATE BILL NO. 2189

(Senators Krebsbach, Espegard, Robinson)
(Representatives Berg, Mahoney, Price)

FUND DIVIDEND TAX DEDUCTION

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to a corporate income tax deduction for dividends paid to shareholders by a regulated investment company or a fund of a regulated investment company; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 2. EFFECTIVE DATE. This Act is effective for assessments made after December 31, 2000.

Approved March 15, 2001
Filed March 15, 2001

CHAPTER 524

HOUSE BILL NO. 1223

(Representatives Brandenburg, Devlin, Kretschmar, Severson)
(Senators Klein, Kroeplin)

GEOTHERMAL, SOLAR, AND WIND TAX CREDIT

AN ACT to amend and reenact section 57-38-01.8 of the North Dakota Century Code, relating to application of the income tax credit for geothermal, solar, or wind energy devices; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-01.8 of the North Dakota Century Code is amended and reenacted as follows:

57-38-01.8. Income tax credit for installation of geothermal, solar, or wind energy devices.

1. Any taxpayer filing a North Dakota income tax return pursuant to the provisions of this chapter may claim a credit for the cost of a geothermal, solar, or wind energy device installed before January 1, 2011, in a building or on property owned or leased by the taxpayer in North Dakota. The credit provided in this section for a device installed before January 1, 2001, must be in an amount equal to five percent per year for three years, and for a device installed after December 31, 2000, must be in an amount equal to ~~five~~ three percent per year for ~~three~~ five years of the actual cost of acquisition and installation of the geothermal, solar, or wind energy device and must be subtracted from any income tax liability of the taxpayer as determined pursuant to the provisions of this chapter.
2. For the purposes of this section:
 - a. "Geothermal energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, by a method which extracts or converts the energy naturally occurring beneath the earth's surface in rock structures, water, or steam.
 - b. "Solar or wind energy device" means a system or mechanism or series of mechanisms designed to provide heating or cooling or to produce electrical or mechanical power, or any combination of these, or to store any of these, by a method which converts the natural energy of the sun or wind.
3. If a geothermal, solar, or wind energy device is a part of a system which uses other means of energy, only that portion of the total system directly attributable to the cost of the geothermal, solar, or wind energy device may be included in determining the amount of the credit. The costs of installation may not include costs of redesigning, remodeling, or

otherwise altering the structure of a building in which a geothermal, solar, or wind energy device is installed.

4. A partnership, subchapter S corporation, limited partnership, limited liability company, or any other passthrough entity that installs a geothermal, solar, or wind energy device in a building or on property owned or leased by the passthrough entity must be considered to be the taxpayer for purposes of this section, and the amount of the credit allowed with respect to the entity's investments must be determined at the passthrough entity level. The amount of the total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 525

HOUSE BILL NO. 1065

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

INDIVIDUAL AND PARTNERSHIP INCOME ALLOCATION

AN ACT to create and enact section 57-38-08.1 of the North Dakota Century Code, relating to the allocation and apportionment of partnership income for income tax purposes; to amend and reenact subsections 4, 5, and 6 of section 57-38-04 and section 57-38-08 of the North Dakota Century Code, relating to the allocation and apportionment of an individual's gross income and the distribution of partnership income for income tax purposes; to repeal section 57-38-10 of the North Dakota Century Code, relating to allocation and apportionment of partnership income for income tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4, 5, and 6 of section 57-38-04 of the North Dakota Century Code are amended and reenacted as follows:

4. Income derived from ~~carrying on a trade or~~ business activity carried on by an individual as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity must be assigned to this state without regard to the residence of the individual if the ~~trade or~~ business activity is conducted wholly within this state. Income derived from gaming activity carried on in this state by an individual must be assigned to this state without regard to the residence of the individual.
5. Whenever a ~~trade or~~ business activity is carried on partly within and partly without this state by a nonresident of this state, as a sole proprietorship, or through a partnership, subchapter S corporation, or other passthrough entity, the entire income therefrom must be allocated to this state and to other states, according to the provisions of chapter 57-38.1, providing for allocation and apportionment of income of corporations doing business within and without this state.
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 ~~such the~~ business consists principally of the holding of ~~such the~~ property and the collection of income and gains therefrom, must be assigned to this state without regard to the situs of ~~such the~~ property.
 - b. Income derived from ~~carrying on a trade or~~ 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 ~~such trade or the~~ business activity is conducted.

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 ~~such~~ the payment is furnished to the tax commissioner; provided, that this credit for ~~such~~ 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.

SECTION 2. AMENDMENT. Section 57-38-08 of the North Dakota Century Code is amended and reenacted as follows:

57-38-08. Partnerships not subject to tax. Partnerships are not subject to tax under this chapter. Persons carrying on a business as partners are taxable on their share of the net profits of a partnership ~~whether the same are distributed or not and are entitled to deduct their share of any net losses suffered by the partnership~~ respective shares of the partnership's income, gain, loss, and deduction included in the partner's federal taxable income, as provided under section 57-38-08.1.

SECTION 3. Section 57-38-08.1 of the North Dakota Century Code is created and enacted as follows:

57-38-08.1. Allocation and apportionment of partnership income - Taxation of partners.

1. A partnership that carries on its business activity entirely within this state shall report all of its income or loss to this state. A partnership that carries on its business activity within and without this state shall allocate and apportion its income or loss to this state in the same manner as the income or loss of a corporation is allocated and apportioned to the state under chapter 57-38.1.
2. Resident partners, limited to individuals, estates, and trusts, must report their entire distributive share to this state as provided in subdivision b of subsection 6 of section 57-38-04, and may claim a credit for taxes paid to another state on that portion of their distributive share attributable to and taxed by another state, as provided in subdivision c of subsection 6 of section 57-38-04.
3. a. In determining the gross income of a nonresident partner, limited to individuals, estates, and trusts, there must be included only that part derived from or connected with sources in this state of the partner's distributive share of items of partnership income, gain, loss and deduction, or item thereof, entering into the federal taxable income of the partner, as determined under section 57-38-04. Except as otherwise provided in this subdivision,

guaranteed payments paid to nonresident partners of a partnership that has business activity in this state are treated as a distributive share of partnership income for state tax purposes. In the case of a professional service partnership, the portion of a guaranteed payment paid to a nonresident partner attributable to a reasonable salary may not be treated as a distributive share. The portion of the guaranteed payment not treated as a distributive share that is for services performed in this state must be assigned as provided under subsection 1 of section 57-38-04. For purposes of this subdivision, "professional service partnership" means a partnership that engages in the practice of law, accounting, medicine, and any other profession in which neither capital nor the services of employees are a material income producing factor.

- b. In determining the sources of a nonresident partner's income, no effect shall be given to a provision in the partnership agreement which:
- (1) Characterizes payments to the partners as being for services or for the use of capital or allocates to the partner, as income or gain from sources outside this state, a greater proportion of the partner's distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside this state to partnership income or gain from all sources, except as authorized in subdivision d; or
 - (2) Allocates to the partner a greater proportion of a partnership item of loss or deduction connected with sources in this state than the proportionate share of the partner, for federal income tax purposes, of partnership loss or deduction generally, except as authorized in subdivision d.
- c. Any modification to federal taxable income described in this chapter that relates to an item of partnership income, gain, loss, or deduction, or item thereof, must be made in accordance with the partner's distributive share, for federal income tax purposes, of the item to which the modification relates, but limited to the partner's portion of the item derived from or connected with sources in this state.
- d. On application, the commissioner may authorize the use of other methods of determining a nonresident partner's portion of partnership items derived from or connected with sources in this state, and the related modifications, as may be appropriate and equitable, on the terms and conditions as it may require.

SECTION 4. REPEAL. Section 57-38-10 of the North Dakota Century Code is repealed.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 526

HOUSE BILL NO. 1399

(Representatives Carlson, Kasper, Koppelman, Wald)
(Senators Christmann, G. Nelson)

SHORT-FORM TAX LIABILITY DETERMINATION

AN ACT to amend and reenact sections 57-38-30.3 and 57-38-31.1 of the North Dakota Century Code, relating to determination of income tax liability on the short-form state income tax return and the filing of composite returns; to repeal section 57-38-34.1 of the North Dakota Century Code, relating to an optional card income tax return; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁸ **SECTION 1. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Notwithstanding the other provisions of this chapter, an individual, estate, or trust may elect to determine state income tax liability by applying the provisions of this section. Any taxpayer electing to determine the taxpayer's income tax liability pursuant to this section is only eligible for those adjustments or credits which are specifically provided for in this section. Provided, that for purposes of this section, any person required to file a state income tax return pursuant to the provisions of this chapter, but who has not computed a federal taxable income or federal income tax liability figure shall compute such a federal taxable income figure using a pro forma return pursuant to the provisions of this section in order to determine a federal taxable income ~~tax liability~~ figure to be used as a starting point in computing state income tax.
2. 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. ~~This tax is fourteen percent of the individual's, estate's, or trust's adjusted federal income tax liability for the taxable year.~~ 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

²⁵⁸ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1413, chapter 528, section 53 of Senate Bill No. 2032, chapter 488, section 2 of Senate Bill No. 2252, chapter 522, and section 1 of Senate Bill No. 2386, chapter 527.

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.

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

b. Married filing jointly and surviving spouse.

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

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

d. Head of household.

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

e. Estates and trusts.

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

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.
3. The adjusted federal income tax liability for a resident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income taxable to this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator 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. ~~Interest~~ 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. ~~The~~ 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. ~~An~~ 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.
4. The adjusted federal income tax liability of a nonresident individual, estate, and trust must be determined by multiplying the federal income tax liability by a fraction, the numerator of which is the adjusted gross income derived from sources within this state and the denominator of which is the total adjusted gross income as reported on the federal income tax return. To the extent they are included in the taxpayer's federal adjusted gross income, the following amounts must be excluded from the numerator:
 - a. 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. The portion of a distribution from a qualified investment fund described in section 57-38-04 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. An 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.
 5. For purposes of this section, "federal income tax liability" means the individual's, estate's, or trust's federal income tax computed for the taxable year under Internal Revenue Code sections 4 and 3, relating to the computation of the regular federal income tax before credits, including calculation and tax rate modifications prescribed under other provisions of the Internal Revenue Code, adjusted as follows:
 - a. Add the alternative minimum tax computed under Internal Revenue Code section 55;
 - b. Add the tax on a lump sum distribution computed under Internal Revenue Code section 402; however, this adjustment does not apply if the lump sum distribution is received while a nonresident of this state and is exempt from taxation by this state under federal law;
 - c. Add the tax on an accumulation distribution of a trust computed under Internal Revenue Code section 667;
 - d. Add the tax computed under Internal Revenue Code section 72(m)(5) on excess benefits received from a qualified plan under Internal Revenue Code section 401(a) or a qualified annuity under Internal Revenue Code section 403(a);

- e. Add the tax computed under Internal Revenue Code section 72(q)(1) on an early distribution from an annuity contract;
- f. Add the tax computed under Internal Revenue Code section 72(t)(1) on an early distribution from a qualified retirement plan;
- g. Add the tax computed under Internal Revenue Code section 4973(a) on excess contributions to an individual retirement account, medical savings account, and certain Internal Revenue Code section 403(b) and annuity contracts; however, this adjustment does not apply if the individual, estate, or trust is a nonresident of this state;
- h. Add the tax computed under Internal Revenue Code section 4974(a) on excess accumulations in a qualified retirement plan; however, this adjustment does not apply if the individual, estate, or trust is a nonresident of this state;
- i. Add the tax computed under Internal Revenue Code section 4980A on excess distributions from a qualified retirement plan; and
- j. Subtract the credit for prior year minimum tax computed under Internal Revenue Code section 53.

Unless specifically provided for in this subsection, no federal income tax credit may be subtracted in determining the federal income tax liability for purposes of this section. Each adjustment in subsection 3 may be allowed only to the extent the adjustment is attributable to income allocated and apportioned to this state.

- 6. 5. A husband and wife 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.
- 7. 6.
 - 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 entire federal adjusted gross income as reported on the taxpayer's federal income tax return.
- 8. 7.
 - a. Individuals, estates, or trusts receiving a refund of 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 returns reducing the federal income tax

~~liability for the year for which the federal income tax refund is granted and may not report return to reflect the changes on the federal income tax refund in the year received return.~~

- ~~b.~~ Individuals, estates, or trusts assessed additional federal income tax for a year for which an election to file state income tax returns has been made under this section shall file amended state income tax returns increasing the federal income tax liability for the year for which the additional federal income tax is assessed and may not report increased federal income tax liability in the year in which the additional federal income tax is paid.
- ~~9.~~ 8. 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.
- ~~40.~~ 9. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.20.
- ~~44.~~ 10. 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.
11. 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.
12. a. At the election of an individual taxpayer engaged in a farming business, the tax imposed by subsection 2 for the taxable year must be equal to the sum of the following:
- (1) The tax computed under subsection 2 on North Dakota taxable income reduced by elected farm income.

- (2) The increase in tax imposed by subsection 2 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.
13. The tax commissioner may prescribe tax tables, to be used in computing the tax according to subsection 2, if the amounts of the tax tables are based on the tax rates set forth in subsection 2. If prescribed by the tax commissioner, the tables must be followed by every individual, estate, or trust determining a tax under this section.

SECTION 2. AMENDMENT. Section 57-38-31.1 of the North Dakota Century Code is amended and reenacted as follows:

57-38-31.1. Composite returns. Partnerships and subchapter S corporations may file a composite return on behalf of nonresident individual partners or shareholders in the manner prescribed by the tax commissioner. Any amount of tax paid by the partnership or subchapter S corporation on the composite return on behalf of a nonresident partner or shareholder constitutes a credit on the North Dakota return of the nonresident individual on whose behalf the tax was paid by the partnership or subchapter S corporation. Any return filed by a partnership or subchapter S corporation under this section is considered as the return of the nonresident individual partner or shareholder on whose behalf the return is filed. The tax under this section must be computed by multiplying the aggregate of the shares of North Dakota taxable income reportable to North Dakota by the partners or shareholders included in the composite return by the highest federal tax rate for individuals times the tax rate imposed under section ~~57-38-30.3~~ five and fifty-four hundredths percent.

SECTION 3. REPEAL. Section 57-38-34.1 of the North Dakota Century Code is repealed.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved May 4, 2001
Filed May 8, 2001

CHAPTER 527

SENATE BILL NO. 2386

(Senators Kroeplin, Erbele)
(Representatives Brandenburg, Kerzman)

AGRICULTURAL COOPERATIVE INVESTMENT INCOME TAX CREDIT

AN ACT to create and enact a new subsection to section 57-38-30.3 and chapter 57-38.6 of the North Dakota Century Code, relating to an agricultural cooperative investment income tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁹ **SECTION 1.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 2. Chapter 57-38.6 of the North Dakota Century Code is created and enacted as follows:

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

1. "Agricultural commodity processing facility" means a facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state.
2. "Director" means the director of the department of economic development and finance.
3. "Qualified business" means a cooperative or limited liability company that:
 - a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of processing and marketing agricultural commodities capable of being raised in this state;
 - b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
 - c. Has an agricultural commodity processing facility in this state; and

²⁵⁹ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1399, chapter 526, section 1 of House Bill No. 1413, chapter 528, section 53 of Senate Bill No. 2032, chapter 488, and section 2 of Senate Bill No. 2252, chapter 522.

- d. Has a majority of its ownership interests owned by producers of unprocessed agricultural commodities.

4. "Taxpayer" means an individual, estate, or trust.

57-38.6-02. Certification - Investment reporting by qualified businesses.

The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses.

57-38.6-03. Agricultural business investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section 57-38-29 or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The aggregate annual investment for which a taxpayer may obtain a tax credit under this section is not more than twenty 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 of the credit under this section which is attributable to qualified investments in a single taxable year. The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under chapter 57-38.
3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to fifteen 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. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years.
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.
7. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer

or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

57-38.6-04. Taxable year for agricultural business investment tax credit.

The tax credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in which full consideration for the investment in the qualified business was received by the qualified business.

57-38.6-05. Agricultural business investment tax credit - Procedure -

Rules. To receive the tax credit provided by section 57-38.6-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.6-06.

57-38.6-06. Investment reporting forms.

Within thirty days after the date on which an investment in a qualified business is purchased, the qualified business shall file with the tax commissioner and the director and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the qualified business the following:

1. The name, address, and social security number of the taxpayer who made the investment.
2. The dollar amount paid for the investment by the taxpayer.
3. The date on which full consideration was received by the qualified business for the investment.

57-38.6-07. Rules and administration.

The tax commissioner is charged with administration of this chapter as it relates to an income tax credit and has the same powers for purposes of this chapter as provided under section 57-38-56. The director is charged with administration of this chapter as it relates to certification of qualified businesses and the director may adopt rules for that purpose.

SECTION 3. EFFECTIVE DATE.

This Act is effective for taxable years beginning after December 31, 2000, and for investments in qualified businesses made after December 31, 2000.

Approved April 10, 2001

Filed April 10, 2001

CHAPTER 528

HOUSE BILL NO. 1413

(Representatives Berg, B. Thoreson, Wald, Weiler)
(Senators Grindberg, Wardner)

SEED CAPITAL INVESTMENT TAX CREDIT

AN ACT to create and enact a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to credits allowed on the short-form income tax return; to amend and reenact subsection 4 of section 57-38.5-01 and sections 57-38.5-02, 57-38.5-03, and 57-38.5-05 of the North Dakota Century Code, relating to the seed capital investment tax credit; to provide for a report on seed capital investment tax credits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁰ **SECTION 1.** A new subsection to section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

A taxpayer filing a return under this section is entitled to the credit provided under section 57-38.5-03.

²⁶¹ **SECTION 2. AMENDMENT.** Subsection 4 of section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Qualified business" means ~~a~~:
 - ~~a.~~ A primary sector business that:
 - ~~a.~~ (1) Is incorporated or its satellite operation is incorporated as a for-profit corporation or is a partnership, limited partnership, limited liability company, limited liability partnership, or joint venture;
 - ~~b.~~ (2) Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;
 - ~~c.~~ (3) Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation; and

²⁶⁰ Section 57-38-30.3 was also amended by section 1 of House Bill No. 1399, chapter 526, section 53 of Senate Bill No. 2032, chapter 488, section 2 of Senate Bill No. 2252, chapter 522, and section 1 of Senate Bill No. 2386, chapter 527.

²⁶¹ Section 57-38.5-01 was also amended by section 55 of Senate Bill No. 2032, chapter 488.

- d. (4) Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has or is projected to have more than ~~twenty-five~~ ten employees or ~~two~~ one hundred fifty thousand dollars of sales annually; ~~and~~
- e. ~~Has a majority of its ownership interests owned by one or more individuals for whom operation of the business is their full-time professional activity or~~
- b. An organization that:
 - (1) Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state; and
 - (2) Attracts investments to build and own a value-added agricultural processing facility that it leases with an option to purchase to a primary sector business that qualifies under subdivision a.

SECTION 3. AMENDMENT. Section 57-38.5-02 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-02. Certification - Investment reporting by qualified businesses. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 4 of section 57-38.5-01 and the certification must include the period of time the certification covers. The director shall establish the necessary forms and procedures for certifying qualified businesses.

SECTION 4. 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 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 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 of the credit under this section which is attributable to investments in a single taxable year. ~~The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under this chapter.~~
3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to ~~fifteen~~ 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 ~~the least of the following amounts:~~
 - a. ~~Thirty percent of the total amount of investments in the qualified business during the taxable year.~~
 - b. ~~Gross receipts from out-of-state sales of the business during the taxable year.~~
 - e. ~~Two~~ two hundred fifty thousand dollars.
7. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
8. 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. 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 5. AMENDMENT. Section 57-38.5-05 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-05. Seed capital investment tax credit limits. The aggregate amount of seed capital investment tax credit allowed for investments under this chapter ~~in any taxable~~ through calendar year 2002 is limited to one million dollars and after calendar year 2002 is limited to two million five hundred fifty thousand dollars. If investments in qualified businesses reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for investments imposed by this

section, the credit must be allowed to taxpayers in the chronological order of their investments in qualified businesses as determined from the forms filed under section 57-38.5-07.

SECTION 6. SEED CAPITAL INVESTMENT TAX CREDIT REPORT. The department or division of economic development and finance shall report on usage of the credit under chapter 57-38.5, to the finance and taxation committees of the house of representatives and the senate of the fifty-eighth legislative assembly. The report must be filed at a public hearing of each committee between the first and tenth legislative day of the fifty-eighth legislative assembly and must include information identifying each business that has been certified as a qualifying business under chapter 57-38.5. The aggregate amount of investments in each qualified business as shown by investment reporting forms filed with the director, and any available indicia of success of each qualified business including growth in employment and sales or revenues.

SECTION 7. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2001.

Approved April 27, 2001
Filed April 27, 2001

CHAPTER 529

HOUSE BILL NO. 1077

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

EXEMPT ORGANIZATION TAX RETURNS

AN ACT to amend and reenact section 57-38-34 and subsection 8 of section 57-38-38 of the North Dakota Century Code, relating to the filing date of exempt organization income tax returns regarding unrelated business taxable income and tax assessment extension agreements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-34 of the North Dakota Century Code is amended and reenacted as follows:

57-38-34. Time and place of filing returns - Interest on tax when time for filing is extended.

1. Returns must be in such form as the tax commissioner from time to time may prescribe and may include the requirement that a copy of the taxpayer's federal income tax return or a portion thereof or information reflected thereon be attached to, furnished with, or included in the taxpayer's state income tax return. The taxpayer's state income tax return must contain a method for the taxpayer to identify the school district in which the taxpayer resides and must be filed with the tax commissioner's office in Bismarck, North Dakota. The tax commissioner shall prepare blank forms for use in making returns and shall cause them to be distributed throughout this state, but failure to receive or secure a form does not relieve a taxpayer from making a return.
2. Returns made on the basis of the calendar year must be filed on or before the fifteenth day of April following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the fourth month following the close of the fiscal year.
3. Returns for cooperatives, domestic international sales corporations, and foreign sales corporations, however, made on the basis of the calendar year must be filed on or before the fifteenth day of September following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the ninth month following the close of the fiscal year.
4. Returns for exempt organizations required to report unrelated business taxable income under subsection 2 of section 57-38-09 made on the basis of the calendar year must be filed on or before the fifteenth day of May following the close of the calendar year and returns made on the basis of a fiscal year must be filed on or before the fifteenth day of the fifth month following the close of the fiscal year.

5. A taxpayer actively serving in the armed forces or merchant marine, outside the boundaries of the United States, may defer the filing of an income tax return and the payment of the income tax until such time as the federal income tax return is required to be filed at which time the state income tax return, with payment of tax, will also be due. No interest or penalty accrues to the date of such filing.
- ~~5.~~ 6. The tax commissioner may grant a reasonable extension of time for filing a return when, in the judgment of the tax commissioner, good cause exists.

SECTION 2. AMENDMENT. Subsection 8 of section 57-38-38 of the North Dakota Century Code is amended and reenacted as follows:

8. If before the expiration of the time periods prescribed in subsections 1 ~~and~~, 2, and 3 the tax commissioner and a person consent in writing to an extension of time for the assessment of the tax, an assessment of additional state income tax may be made at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. If a person refuses to consent to an extension of time or a renewal thereof, the tax commissioner may make an assessment based on the best information available. The period agreed upon in this subsection, including extensions, expires upon issuance of an assessment by the tax commissioner.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 13, 2001
Filed March 13, 2001

CHAPTER 530

SENATE BILL NO. 2060

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

INCOME AND SALES TAX PENALTIES

AN ACT to amend and reenact subsection 2 of section 57-38-45, subsection 1 of section 57-39.2-18, and subsection 1 of section 57-40.2-15 of the North Dakota Century Code, relating to penalties for income tax and sales or use tax purposes; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-38-45 of the North Dakota Century Code is amended and reenacted as follows:

2. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to ~~additions to tax and penalty~~ penalties as follows:
 - a. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to pay the amount shown as tax due on any return, including tax withheld by an employer, filed on or before the due date or extended due date prescribed therefor, there shall be added to the tax a penalty of five percent thereof, or five dollars, whichever is greater.
 - b. If any taxpayer, without intent to evade any tax imposed by this chapter, shall fail to file a return, including the employer's withheld tax return, on or before the due date or extended due date prescribed therefor, there shall be added a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction thereof during which the failure continues, not exceeding twenty-five percent in the aggregate.
 - c. If upon audit of a taxpayer's return, including tax withheld by an employer, an additional tax is found to be due, there shall be added to the tax penalty as prescribed in subdivision a or b.
 - d. If the mathematical verification of a taxpayer's return, including tax withheld by an employer, results in additional tax due, there shall be added to the tax penalty as prescribed in subdivision a or b.
 - e. The provisions of subdivision a, b, c, or d do not apply to the extent it has been determined that the taxpayer has offsetting overpayments of income taxes which have not been refunded.
 - f. ~~An employer, required to file returns under subsection 4 of section 57-38-60, with four to eight delinquent original tax returns or payments is subject to a penalty of ten percent of the tax due or~~

~~twenty-five dollars, whichever is greater. An employer with nine or more delinquent original returns or payments is subject to a penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater.~~

SECTION 2. AMENDMENT. Subsection 1 of section 57-39.2-18 of the North Dakota Century Code is amended and reenacted as follows:

1. a. ~~If any person fails to file a return or corrected return or to pay any tax within the time required by this chapter or, if upon audit, is found to owe additional tax, the person is subject to a penalty of five percent of the amount of tax due or of five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. Any person on a monthly filing schedule with seven to fourteen delinquent original returns or payments, and any person other than a monthly filer with four to eight delinquent original returns or payments, is subject to a penalty of ten percent of the tax due or twenty-five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. Any person on a monthly filing schedule with fifteen or more delinquent original returns or payments, and any person other than a monthly filer with nine or more delinquent original returns or payments, is subject to a penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater, plus interest of one percent of the tax due per month or fraction of a month of delay except the first month after the return or the tax became due.~~
- b. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to penalties as follows:
 - (1) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to file a return, on or before the prescribed or extended due date, a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, must be added if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.
 - (2) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to pay the amount shown as tax due on any return, filed on or before the prescribed or extended due date, a penalty of five percent of the tax due, or five dollars, whichever is greater, must be added to the tax.
 - (3) If upon audit of a taxpayer's return an additional tax is found to be due, penalty as prescribed in subdivision a or b must be added to the tax.
 - (4) The commissioner, if satisfied that the delay was excusable, 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 tax imposed by this chapter.

SECTION 3. AMENDMENT. Subsection 1 of section 57-40.2-15 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Any person failing to file a return or corrected return or to pay any tax imposed pursuant to under this chapter, within the time required by this chapter, is subject to a penalty of five percent of the amount of tax due or of five dollars, whichever is greater, plus interest of one percent of the tax for each month or fraction of a month except the first month after the return or the tax became due. Any person on a monthly filing schedule with seven to fourteen delinquent original returns or payments, and any person other than a monthly filer with four to eight delinquent original returns or payments, is subject to a penalty of ten percent of the tax due or twenty-five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or tax became due. Any person on a monthly filing schedule with fifteen or more delinquent returns or payments, and any person other than a monthly filer with nine or more delinquent original returns or payments, is subject to a penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater, plus interest of one percent of the tax due per month or fraction of a month of delay except the first month after the return or tax became due.
- b. In addition to the tax and interest prescribed in this chapter, a taxpayer is subject to penalties as follows:
 - (1) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to file a return, on or before the prescribed or extended due date, a penalty equal to five percent of the tax required to be reported, or five dollars, whichever is greater, must be added if the failure is for not more than one month, counting each fraction of a month as an entire month, with an additional five percent for each additional month or fraction of a month during which the failure continues, not exceeding twenty-five percent in the aggregate.
 - (2) If any taxpayer, without intent to evade any tax imposed by this chapter, fails to pay the amount shown as tax due on any return, filed on or before the prescribed or extended due date, a penalty of five percent of the tax due, or five dollars, whichever is greater, must be added to the tax.
 - (3) If upon audit of a taxpayer's return an additional tax is found to be due, penalty as prescribed in subdivision a or b must be added to the tax.

- (4) The commissioner, if satisfied that the delay was excusable, 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 the tax with respect to which it is attached. Unpaid penalties and interest may be enforced in the same manner as is the tax.

Approved March 19, 2001

Filed March 19, 2001

CHAPTER 531

HOUSE BILL NO. 1076

(Finance and Taxation Committee)

(At the request of the Board of University and School Lands)

TAXPAYER INFORMATION DISCLOSURE TO LAND BOARD

AN ACT to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to disclosure of identifying information to the board of university and school lands; and to amend and reenact section 57-39.2-23 of the North Dakota Century Code, relating to disclosure of identifying information to the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-57 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner may furnish to the unclaimed property division of the board of university and school lands, upon its request, a taxpayer's name, address, and federal identification number for the sole purpose of identifying the taxpayer as the owner of an unclaimed voucher authorized by the tax commissioner.

²⁶² **SECTION 2. AMENDMENT.** Section 57-39.2-23 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-23. Information deemed confidential - Certain releases of information authorized. Except as provided by law, it is unlawful for the commissioner or any person having an administrative duty under this chapter to divulge or to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of any person, corporation, or limited liability company in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars thereof set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract of particulars thereof to be seen or examined by any person. The commissioner may authorize examination of those returns by other state officers and at the commissioner's discretion furnish to the tax officials of other states, the multistate tax commission, and the United States any information contained in the tax returns and reports and related schedules and documents filed under this chapter, and in the report of an audit or investigation made with respect thereto, if the information is furnished solely for tax purposes. The multistate tax commission may make the information available to the tax officials of any other state and the United States for tax purposes.

²⁶² Section 57-39.2-23 was also amended by section 2 of Senate Bill No. 2063, chapter 540.

The commissioner may furnish to the workers compensation bureau, the job insurance division of job service North Dakota, and the secretary of state upon request of the respective agency a list or lists of holders of permits issued under this chapter or chapter 57-40.2, together with the addresses and tax department file identification numbers of those permitholders. The agency may use the list or lists only for the purpose of administering the duties of the agency. The commissioner may furnish to the unclaimed property division of the board of university and school lands, upon its request, the name, address, and the permitholder's federal identification number for the sole purpose of identifying the owner of an unclaimed voucher authorized by the commissioner. The commissioner may furnish to any state agency or to a private entity a list of names and addresses of holders of permits issued pursuant to this chapter or chapter 57-40.2 for the purpose of jointly publishing or distributing publications or other information pursuant to section 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. The commissioner or any person having an administrative duty under this chapter may announce that a permit has been revoked.

Approved March 6, 2001
Filed March 6, 2001

CHAPTER 532**HOUSE BILL NO. 1072**

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

EMPLOYER TAX WITHHOLDING RETURNS

AN ACT to amend and reenact subsection 1 of section 57-38-60 of the North Dakota Century Code, relating to the requirements to file annual income tax withholding returns by employers; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-38-60 of the North Dakota Century Code is amended and reenacted as follows:

1. Every employer shall, on or before the last day of April, July, October, and January, pay over to the tax commissioner the amount required to be deducted and withheld from wages paid to all employees during the preceding calendar quarter under section 57-38-59. If the amount required to be deducted and withheld from wages paid to all of an employer's employees during the previous calendar year was less than ~~two~~ five hundred ~~fifty~~ dollars, the employer may file an annual return. The tax commissioner may alter the time or period for making reports and payment when in the tax commissioner's opinion, the tax is in jeopardy, or may prescribe the use of any other time or period as will facilitate the collection and payment of the tax by the employer.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable periods beginning after December 31, 2000.

Approved March 12, 2001
Filed March 12, 2001

CHAPTER 533

HOUSE BILL NO. 1078

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

ESTIMATED INCOME TAX PAYMENT REQUIREMENTS

AN ACT to amend and reenact subsections 1 and 3 of section 57-38-62 of the North Dakota Century Code, relating to estimated income tax payment requirements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 57-38-62 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual, estate, or trust that is subject to section 6654 of the Internal Revenue Code relating to a failure to pay federal estimated income tax shall, at the time prescribed in this chapter, pay estimated tax for the current taxable year. Notwithstanding any other provision of this section, an individual, estate, or trust whose net tax liability for the preceding taxable year was less than ~~two~~ five hundred dollars is not required to pay estimated tax for the current taxable year. Married individuals who file a joint federal income tax return and are subject to section 6654 of the Internal Revenue Code must each be deemed to be subject to the federal provision. If payment of estimated tax is required, the individual, estate, or trust shall, at the time prescribed in this chapter, pay the lesser of the following:
 - a. An amount which, when added to the taxpayer's withholding, equals ninety percent of the taxpayer's current taxable year's net tax liability.
 - b. An amount which, when added to the taxpayer's withholding, equals one hundred percent of the taxpayer's net tax liability for the immediately preceding taxable year.
 - (1) This subdivision does not apply to any taxpayer who was not required by this chapter to file a return for the immediately preceding taxable year, to an individual who moved into this state during the immediately preceding taxable year, or to an estate or trust that was not in existence for the entire immediately preceding taxable year. The amount under this subdivision must be deemed to be equal to the amount in subdivision a if this part applies.
 - (2) In order to satisfy the requirements of this subdivision, married individuals who are required to file separate state returns for the current taxable year but who were required to file a joint state return for the immediately preceding taxable year must each be required to pay estimated tax in an

amount which, when added to the individual's withholding, equals the net tax liability which would have been computed for the immediately preceding taxable year if separate state returns had been required to be filed.

- (3) In order to satisfy the requirements of this subdivision, married individuals who are required to file a joint state return for the current taxable year but were required to file separate state returns for the immediately preceding taxable year must be required to pay estimated tax in an amount which, when added to their withholding, equals the sum of their separate net tax liabilities for the immediately preceding taxable year.
3. The provisions of section 57-38-45, except those provisions relating to the imposition of a penalty, apply in case of nonpayment, late payment, or underpayment of estimated tax. For purposes of applying the interest provisions of section 57-38-45, interest accrues on a per annum basis from the due date of an installment to the fifteenth day of the fourth month following the end of the current taxable year or, with respect to any portion of the estimated tax required to be paid, the date on which the portion thereof is paid, whichever date is earlier. Notwithstanding the other provisions of this section, no interest is due if the estimated tax paid on or before each due date under section 57-38-63 by a corporation is based on the annualized or adjusted seasonal method under section 6655 of the Internal Revenue Code. Notwithstanding the other provisions of this section, no interest is due if the estimated tax of an individual, estate, or trust is less than ~~two~~ five hundred dollars per income tax return filed.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2000.

Approved March 13, 2001
Filed March 13, 2001

CHAPTER 534

HOUSE BILL NO. 1052

(Legislative Council)
(Taxation Committee)

USED FARM MACHINERY SALES TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to a sales and use tax exemption for sales and use of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes; to amend and reenact subsection 3 of section 57-39.2-01 and sections 57-39.2-02.1 and 57-40.2-02.1 of the North Dakota Century Code, relating to imposition of sales tax on sales of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-39.2-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "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 ~~or~~, 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.

²⁶³ **SECTION 2. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-02.1. (Effective through June 30, 2004 ~~2002~~) Sales tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for sales of mobile homes used for residential or business purposes; for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; and for sales of coal, 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 farm machinery, farm machinery repair parts, and 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 used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.

²⁶³ Section 57-39.2-02.1 was also amended by section 2 of Senate Bill No. 2299, chapter 535.

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. There is imposed a tax of one and one-half percent upon the gross receipts of retailers from all sales at retail of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of used farm machinery and used irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. 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
 - c. Has been under lease or rental for three years or more.
3. There is imposed a tax of seventy-five cents per ton of two thousand pounds [907.18 kilograms] on all sales at retail of coal, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
4. 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.

(Effective after June 30, ~~2004~~ 2002) Sales tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for sales of mobile homes used for residential or business purposes; ~~for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes;~~ and, for sales of coal, 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; ~~farm machinery repair parts,~~ 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 used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
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, ~~farm machinery repair parts~~, 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. There is imposed a tax of seventy-five cents per ton of two thousand pounds [907.18 kilograms] on all sales at retail of coal, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
 4. 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.

²⁶⁴ **SECTION 3.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from 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:

²⁶⁴ Section 57-39.2-04 was also amended by section 1 of House Bill No. 1392, chapter 537, section 2 of Senate Bill No. 2181, chapter 536, and section 3 of Senate Bill No. 2299, chapter 535.

- 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
- c. Has been under lease or rental for three years or more.

²⁶⁵ **SECTION 4. AMENDMENT.** Section 57-40.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-02.1. (Effective through June 30, ~~2004~~ 2002) Use tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for purchases of mobile homes used for residential or business purposes, for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, and for purchases of coal used for heating buildings in this state and used in agricultural processing or sugar beet refining plants located within this state or adjacent states, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.
2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of mobile homes used for residential or business purposes and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. An excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of one and one-half percent of the purchase price thereof. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state

²⁶⁵ Section 57-40.2-02.1 was also amended by section 6 of Senate Bill No. 2299, chapter 535.

of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of one and one-half percent of the fair market value of the used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. 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
 - c. Has been under lease or rental for three years or more.
3. An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of seventy-five cents per ton of two thousand pounds [907.18 kilograms], except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
 4. An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994, if sales tax has not been applied as provided by section 57-39.2-03.6.
 5. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

(Effective after June 30, ~~2004~~ 2002) Use tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for purchases of mobile homes used for residential or business purposes, ~~for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes,~~ and for purchases of coal used for heating buildings in this state and used in agricultural processing or sugar beet refining plants located within this state or adjacent states, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.
2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of new farm machinery, ~~farm machinery repair parts,~~ and new irrigation equipment used exclusively for agricultural purposes purchased at retail for

storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of new farm machinery; ~~farm machinery repair parts~~; and new irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of mobile homes used for residential or business purposes and of new farm machinery; ~~farm machinery repair parts~~; and new irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state.

3. An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of seventy-five cents per ton of two thousand pounds [907.18 kilograms], except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
4. An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994, if sales tax has not been applied as provided by section 57-39.2-03.6.
5. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

SECTION 5. EFFECTIVE DATE. Sections 2 and 4 of this Act are effective for taxable events occurring after June 30, 2001. Sections 1 and 3 of this Act are effective for taxable events occurring after June 30, 2002.

Approved May 4, 2001
Filed May 7, 2001

CHAPTER 535

SENATE BILL NO. 2299 (Senators G. Nelson, Krauter) (Representatives Belter, Boucher)

COAL TAX REVISION

AN ACT to create and enact a new subdivision to subsection 7 of section 57-60-01 of the North Dakota Century Code, relating to coal conversion facility gross receipts; to amend and reenact sections 49-06-02 and 57-39.2-02.1, subsection 44 of section 57-39.2-04, section 57-39.2-26.1, subsection 9 of section 57-40.2-01, section 57-40.2-02.1, subdivision b of subsection 3 of section 57-60-01, and sections 57-60-02, 57-60-14, 57-61-01, 57-61-01.7, and 57-62-02 of the North Dakota Century Code, relating to sales and use taxes on coal, the coal severance tax, allocation of coal development funds, the privilege tax on coal conversion facilities, allocation of the privilege tax on coal conversion facilities, and the expiration date for certain severance tax reductions; to repeal section 57-61-01.8 of the North Dakota Century Code, relating to a coal severance tax reduction for coal burned in small boilers; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-06-02 of the North Dakota Century Code is amended and reenacted as follows:

49-06-02. Value of property for ratemaking purposes - Determination.

The value of the property of a public utility, as determined by the commission for ratemaking purposes, is the money honestly and prudently invested therein by the utility including construction work in progress for new facilities that use lignite mined in this state to generate electricity, as well as additions or modifications to existing lignite facilities, less accrued depreciation. The commission shall allow a public utility for those new or existing facilities utilizing lignite mined in this state as its primary fuel:

1. To recover its research and development costs incurred to develop lignite more cleanly, efficiently, or economically, including a reasonable rate of return on capital expenditures; ~~and~~
2. To recover its incremental costs of complying with federal environmental laws, including a reasonable rate of return on capital expenditures. The commission may allow these costs to be recovered by an environmental surcharge that may be added to existing rates; and
3. To recover all costs resulting from a coal severance tax pursuant to chapter 57-61 and all costs resulting from a coal conversion tax pursuant to chapter 57-60. The commission shall allow the inclusion of these costs in the base rates and the inclusion in the automatic adjustment clause of any of these costs not in base rates.

²⁶⁶ **SECTION 2. AMENDMENT.** Section 57-39.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-02.1. (Effective through June 30, 2001) Sales tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for sales of mobile homes used for residential or business purposes; for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; and for sales of coal, 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 farm machinery, farm machinery repair parts, and 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 used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
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

²⁶⁶ Section 57-39.2-02.1 was also amended by section 2 of House Bill No. 1052, chapter 534.

renting of new farm machinery and new irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. There is imposed a tax of one and one-half percent upon the gross receipts of retailers from all sales at retail of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of used farm machinery and used irrigation equipment used exclusively for agricultural purposes within this state to consumers or users. 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
 - c. Has been under lease or rental for three years or more.
3. There is imposed a tax of seventy-five cents per ton of two thousand pounds [907.18 kilograms] on all sales at retail of coal, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
 4. 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.

(Effective after June 30, 2001) Sales tax imposed.

1. Except as otherwise expressly provided in ~~subsections 2 and 3~~ subsection 2 for sales of mobile homes used for residential or business purposes; for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes; ~~and for sales of coal~~, 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 farm machinery, farm machinery repair parts, and 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 ~~in this state and, except for coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.~~
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 farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of farm machinery and irrigation equipment used exclusively for agricultural purposes within this state to consumers or users.
 3. ~~There is imposed a tax of seventy-five cents per ton of two thousand pounds [907.18 kilograms] on all sales at retail of coal, except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.~~
 4. 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.

²⁶⁷ **SECTION 3. AMENDMENT.** Subsection 44 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

44. Gross receipts from all sales of coal used in agricultural processing or sugar beet refining plants located within this state ~~or adjacent states which are exempted from the tax imposed by chapter 57-61.~~

²⁶⁸ **SECTION 4. AMENDMENT.** Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

²⁶⁷ Section 57-39.2-04 was also amended by section 3 of House Bill No. 1052, chapter 534, section 1 of House Bill No. 1392, chapter 537, and section 2 of Senate Bill No. 2181, chapter 536.

²⁶⁸ Section 57-39.2-26.1 was also amended by section 1 of House Bill No. 1211, chapter 541.

57-39.2-26.1. Allocation of revenues among political subdivisions and coal development fund. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections, ~~excluding collections allocated under subsection 3,~~ 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. ~~Notwithstanding any other provision of law, the sales and use tax collections on coal imposed by subsection 3 of section 57-39.2-02.1 and subsection 3 of section 57-40.2-02.1 must be deposited in the coal development fund established under section 57-61-10 and distributed under section 57-62-02.~~

SECTION 5. AMENDMENT. Subsection 9 of section 57-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

9. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership or possession of that property, including the storage, use, or consumption of that property in this state, except that it does not include processing, or the sale of that property in the regular course of business. "Use" also means the severing of sand, or gravel, ~~or coal~~ from the soil of this state for use within or outside this state.

²⁶⁹ **SECTION 6. AMENDMENT.** Section 57-40.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.2-02.1. (Effective through June 30, 2001) Use tax imposed.

1. Except as otherwise expressly provided in subsections 2 and 3 for purchases of mobile homes used for residential or business purposes, for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, and for purchases of coal used for heating buildings in this state and used in agricultural processing or sugar beet refining plants located within this state or adjacent states, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.
2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of new farm machinery and new irrigation equipment used exclusively for agricultural

²⁶⁹ Section 57-40.2-02.1 was also amended by section 4 of House Bill No. 1052, chapter 534.

purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of mobile homes used for residential or business purposes and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. An excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of one and one-half percent of the purchase price thereof. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of one and one-half percent of the fair market value of the used farm machinery, farm machinery repair parts, and used irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state. 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
 - c. Has been under lease or rental for three years or more.
3. An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of seventy-five cents per ton of two thousand pounds [907.18 kilograms], except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.
 4. An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994, if sales tax has not been applied as provided by section 57-39.2-03.6.
 5. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

(Effective after June 30, 2001) Use tax imposed.

1. Except as otherwise expressly provided in ~~subsections~~ subsection 2 and 3 for purchases of mobile homes used for residential or business purposes, for purchases of farm machinery, farm machinery repair parts,

and irrigation equipment used exclusively for agricultural purposes, ~~and for purchases of coal used for heating buildings in this state and used in agricultural processing or sugar beet refining plants located within this state or adjacent states,~~ an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of the property at the time it was brought into this state.

2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of mobile homes used for residential or business purposes and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state.
3. ~~An excise tax is imposed on the storage, use, or consumption in this state of coal at the rate of seventy-five cents per ton of two thousand pounds [907.18 kilograms], except for coal used for heating buildings in this state and coal used in agricultural processing or sugar beet refining plants located within this state or adjacent states.~~
4. An excise tax is imposed on the storage, use, or consumption in this state of natural gas consumed by a final user at the rate of four percent from January 1, 1993, through December 31, 1993; three percent from January 1, 1994, through December 31, 1994; and two percent after December 31, 1994, if sales tax has not been applied as provided by section 57-39.2-03.6.
5. 4. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

SECTION 7. AMENDMENT. Subdivision b of subsection 3 of section 57-60-01 of the North Dakota Century Code is amended and reenacted as follows:

- b. An electrical generating plant, with all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy

generation unit with a capacity of ~~one hundred twenty thousand~~ ten thousand kilowatts or more; or

SECTION 8. A new subdivision to subsection 7 of section 57-60-01 of the North Dakota Century Code is created and enacted as follows:

Prior to January 1, 2010, any revenue received by the operator of a coal gasification plant to the extent the quotient of the gross receipts realized by the operator divided by the synthetic natural gas produced and sold during a month, in units of one thousand cubic feet [28316.85 units] of synthetic gas, exceeds the ceiling price. For calendar years 2001 and 2002, ceiling price means \$4.25 for each thousand cubic feet [28316.85 liters] of synthetic natural gas produced and sold; and the ceiling price for 2003 is \$4.35; for 2004, \$4.45; for 2005, \$4.55; for 2006, \$4.65; for 2007, \$4.75; for 2008, \$4.86; and for 2009, \$4.97;

SECTION 9. AMENDMENT. Section 57-60-02 of the North Dakota Century Code is amended and reenacted as follows:

57-60-02. Imposition of taxes. There is hereby imposed upon the operator of each coal conversion facility a tax paid monthly for the privilege of producing products of such coal conversion facility. The rate of the tax must be computed as follows:

1. For all coal conversion facilities, except as otherwise provided in this section, the tax is measured by the gross receipts derived from such facility for the preceding month and is in the amount of ~~two and one-half~~ four and one-tenth percent of such gross receipts. For purposes of this subsection, "gross receipts" of a coal gasification plant do not include any amount that is received by the operator of the plant for production of synthetic natural gas in excess of one hundred ten million cubic feet per day. Gross receipts derived from the sale of a capital asset are not subject to the tax imposed by this subsection.
2. For electrical generating plants, the tax is at a rate of ~~twenty-five~~ sixty-five one-hundredths of one mill times sixty percent of the installed capacity of each unit times the number of hours in the taxable period. All electrical generating plants that begin construction after June 30, 1991, are exempt from ~~sixty-five~~ eighty-five percent of the tax imposed by this subsection for five years from the date of the first taxable production from the plant. The board of county commissioners may, by resolution, grant to the operator of an electrical generating plant located within the county which begins construction after June 30, 1991, partial or complete exemption from the remaining ~~thirty-five~~ fifteen percent of the tax imposed by this subsection for a period not exceeding five years from the date of the first taxable production from the plant. Notwithstanding section 57-60-14, any tax collected from a plant subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15. If a unit is incapable of generating electricity for eighteen consecutive months, the tax on that unit for taxable periods beginning after the eighteenth month must be reduced by the ratio that the cost of repair of the unit bears to the original cost of the unit. This reduced rate remains in effect until the unit is capable of generating electricity.

3. For electrical generating plants, in addition to the tax imposed by subsection 2, there is a tax at the rate of twenty-five one-hundredths of one mill on each kilowatt hour of electricity produced for the purpose of sale. For all electrical generating plants that begin construction after June 30, 1991, the production from the plants is exempt from the tax imposed by this subsection for five years from the date of the first taxable production from the plant.
4. For coal gasification plants, the tax is the greater of either the amount provided in subsection 1 or ~~seven~~ thirteen and one-half cents on each one thousand cubic feet [28316.85 liters] of synthetic natural gas produced for the purpose of sale but not including any amount of synthetic natural gas in excess of one hundred ten million cubic feet per day.
5.
 - a. For all coal conversion facilities, other than electrical generating plants, the production from the facilities is exempt from ~~sixty-five~~ eighty-five percent of the tax imposed by this section for a period of five years from the date of first taxable production from the facility or for a period of five years from April 20, 1987, whichever is later. The operator of each facility applying for exemption under this subsection shall certify to the tax commissioner the date of first taxable production of the facility.
 - b. The board of county commissioners may, by resolution, grant to the operator of a coal conversion facility, other than an electrical generating plant, located within the county a partial or complete exemption from the remaining ~~thirty-five~~ fifteen percent of tax imposed by this section for a period not exceeding five years from the date of the first taxable production from the facility. Notwithstanding the provisions of section 57-60-14, any tax collected which is based upon the production of a facility subject to the exemption provided by this subsection must be allocated entirely to the county for allocation as provided in section 57-60-15.
6. For coal beneficiation plants, the tax is twenty cents on each ton of two thousand pounds [907.18 kilograms] of beneficiated coal produced for the purpose of sale, or one and one-quarter percent of the gross receipts derived from such facility for the preceding month, whichever amount is greater. Any amount of beneficiated coal produced in excess of eighty percent of the design capacity of the coal beneficiation plant is exempt from such tax.

SECTION 10. AMENDMENT. Section 57-60-14 of the North Dakota Century Code is amended and reenacted as follows:

57-60-14. Allocation of revenue - Continuing appropriation.

1. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08, ~~thirty-five~~ fifteen percent to the county and ~~sixty-five~~ eighty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02 and through December 31, 2009, the first \$41,666.67

each month from the tax imposed by subsections 1 and 4 of section 57-60-02, which must be deposited in the state general fund.

2. Notwithstanding any other provision of law, the allocation under this section to each county may not be less in each calendar year than the amount certified to the state treasurer for each county under this section in the immediately preceding calendar year, except that through December 31, 2009, the portion of the revenue allocation to each county which is attributable to a coal gasification coal conversion facility must exclude consideration of calendar year 2001, and be based on calendar year 2000 or the appropriate year after 2001, whichever is greater. For a county that has received less in a calendar year than the amount certified to the state treasurer for that county in the immediately preceding calendar year, not later than January tenth of the following year, the county auditor shall calculate the amount that is due under this subsection and submit a statement of the amount to the state treasurer. The state treasurer shall verify the stated amount and make the required payment under this subsection to the county, from collections received under section 57-60-02, not later than March first of the following year. The funds needed to make the distribution to counties under this subsection are appropriated on a continuing basis for making these payments. Money received by a county under this subsection must be distributed pursuant to section 57-60-15.
3. Notwithstanding any other provision of law, for a county in which is located a coal conversion facility that was not a coal conversion facility under this chapter before the effective date of section 7 of this Act, that county must receive for calendar year 2002 at least as much under this section as was received by that county and taxing districts in that county in property taxes for that facility for taxable year 2001. For years after 2002, subsection 2 applies to allocations to that county under this section, except that for a county described in this subsection, amounts received for any calendar year must be allocated by the county in the same manner property taxes for the facility were allocated for taxable year 2001.

SECTION 11. AMENDMENT. Section 57-61-01 of the North Dakota Century Code is amended and reenacted as follows:

57-61-01. Severance tax upon coal - Imposition - In lieu of sales and use taxes - Payment to the tax commissioner. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax of ~~seventy five~~ thirty-seven and one-half cents per ton of two thousand pounds [907.18 kilograms]. Such severance tax is in lieu of any sales or use taxes imposed by law. Each coal mine owner or operator shall remit such tax for each month, within twenty-five days after the end of each month, to the state tax commissioner upon such reports and forms as the tax commissioner deems necessary.

SECTION 12. AMENDMENT. Section 57-61-01.7 of the North Dakota Century Code is amended and reenacted as follows:

57-61-01.7. Severance tax reduction for coal mined for out-of-state shipment. For coal subject to taxes under this chapter which is shipped out of state after June 30, ~~1995, and before July 1, 2000~~ 2001:

1. ~~The coal is exempt from fifty percent of the taxes imposed under section 57-61-01.~~
2. The coal is subject to ~~fifteen~~ thirty percent of the taxes imposed under section 57-61-01 and the entire revenue under this subsection must be deposited in the coal development trust fund for use as provided in subsection 1 of section 57-62-02 and allocation to the lignite research fund as provided in subsection 2 of section 57-61-01.5.
3. ~~2.~~ 2. In addition to the taxes under subsection ~~2~~ 1, the coal may be subject to up to ~~thirty-five~~ seventy percent of the severance taxes imposed under section 57-61-01 at the option of the county in which the coal is mined. The board of county commissioners, by resolution, may grant to the operator of a mine from which the coal is shipped out of state a partial or complete exemption from this portion of the severance tax. Any tax revenue from full or partial taxation under this subsection must be allocated to the county under subsection 2 of section 57-62-02.
4. ~~3.~~ 3. Taxes imposed under section 57-61-01.5 apply to coal subject to this section and must be allocated as provided in section 57-61-01.5.

²⁷⁰ **SECTION 13. AMENDMENT.** Section 57-62-02 of the North Dakota Century Code is amended and reenacted as follows:

57-62-02. Allocation of moneys in coal development fund. Moneys deposited in the coal development fund shall be apportioned monthly by the state treasurer as follows:

1. ~~Fifteen~~ Thirty percent must be deposited in a permanent trust fund in the state treasury, to be known as the coal development trust fund, pursuant to section 21 of article X of the Constitution of North Dakota. Those funds held in trust and administered by the board of university and school lands on March 5, 1981, pursuant to section 12, chapter 563, 1975 Session Laws; section 12, chapter 560, 1977 Session Laws; or section 13, chapter 626, 1979 Session Laws must also be deposited in the trust fund created pursuant to this subsection. The fund must be held in trust and administered by the board of university and school lands for loans to coal impacted counties, cities, and school districts as provided in section 57-62-03 and for loans to school districts pursuant to chapter 15-60. The board of university and school lands may invest such funds as are not loaned out as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from the trust must be used first to replace uncollectible loans made from the fund and the balance must be deposited in the state's general fund. Loan principal payments must be redeposited in the trust fund. The trust fund must be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter and chapter 15-60.

²⁷⁰ Section 57-62-02 was also amended by section 36 of House Bill No. 1046, chapter 161.

2. ~~Thirty-five~~ Seventy percent must be allocated to the coal-producing counties and must be distributed among such counties in such proportion as the number of tons [metric tons] of coal severed at each mining operation bears to the total number of tons [metric tons] of coal severed in the state during such monthly period. Allocations under subdivisions a and b must be apportioned by the state treasurer as follows:
 - a. If the tippie of the currently active coal mining operation in a county is not within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue apportioned according to this subdivision must be allocated as follows:
 - (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
 - (2) Forty percent must be paid to the county treasurer who shall deposit it in the county general fund to be used for general governmental purposes.
 - (3) Thirty percent must be apportioned by the state treasurer to school districts within the county on the average daily membership basis, as certified to the state treasurer by the county superintendent of schools.
 - b. If the tippie of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue from the production not exceeding the production limitation in a calendar year which is apportioned from that coal mining operation according to this subsection must be allocated, subject to the definitions of terms and the requirements in paragraph 4, as provided in this subdivision. For purposes of this subdivision, the production limitation is three million eight hundred thousand tons [3447302.02 metric tons] through calendar year 1995, three million six hundred thousand tons [3265865.07 metric tons] in calendar years 1996 and 1997, and three million four hundred thousand tons [3084428.12 metric tons] in calendar years after 1997. Revenue from production exceeding the production limitation in a calendar year from that coal mining operation must be allocated only within the coal-producing county under subdivision a. Allocations under this subdivision must be made as follows:
 - (1) Thirty percent must be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers] of the tippie of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance

with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.

- (2) Forty percent must be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county. The non-coal-producing county portion must be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation. The county director of tax equalization of the coal-producing county shall certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation and their assessed valuations.
- (3) Thirty percent must be apportioned by the state treasurer to school districts within the coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen-mile [24.14-kilometer] radius of the tipple of a currently active coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county.
- (4) For the purposes of this subsection:
 - (a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that produced more than one hundred fifty thousand tons [136077.71 metric tons] of coal in a coal-producing county during the prior quarterly period.

- (b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136077.71 metric tons] of coal were mined in the prior quarterly period.
 - (c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
 - (d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68038.86 metric tons] of coal were mined in the prior quarterly period.
 - (e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a monthly period, the state treasurer shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same monthly period.
3. ~~Fifty percent shall be deposited in the state's general fund, except that after June 30, 1997, the revenue allocated to the state general fund under this subsection which is attributable to severance taxes on new coal production from clean coal demonstration projects must be deposited in the lignite research fund for partial funding of the state share of the clean coal demonstration project generating the new coal production.~~

SECTION 14. REPEAL. Section 57-61-01.8 of the North Dakota Century Code is repealed.

SECTION 15. EFFECTIVE DATE. Section 7 of this Act is effective for taxable events occurring after December 31, 2001, and the remainder of this Act is effective for taxable events occurring after June 30, 2001.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 536

SENATE BILL NO. 2181

(Senators Traynor, Krebsbach, Stenehjem)
(Representatives Glassheim, Hawken)

MOTOR VEHICLE RENTAL SURCHARGE

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a surcharge on motor vehicle rentals; to amend and reenact subsection 13 of section 57-39.2-04 of the North Dakota Century Code, relating to limitations on the sales tax exemption for rentals of motor vehicles; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Surcharge on rental motor vehicles. A company engaged in the business of renting motor vehicles for periods of fewer than thirty days shall collect a three percent surcharge on each rental contract at the time a vehicle of a gross vehicle weight of ten thousand pounds [4535.92 kilograms] or less is rented from the company in this state. A vehicle is considered rented in this state if possession is obtained by the renter in this state. The surcharge must be computed on the total dollar amount for the rental as stated in the rental contract, excluding taxes, fuel collections, or other ancillary products sold to customers such as collision damage waiver, supplemental liability protection, personal accident insurance, and personal effects coverage.

1. A surcharge under this section must be noted in the rental contract and collected in accordance with the terms of the contract.
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 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.
3. For three years after filing the report under this section the company shall retain copies of rental contracts and the commissioner may require the company to furnish copies of rental contracts for purposes of ensuring compliance with this section.

²⁷¹ **SECTION 2. AMENDMENT.** Subsection 13 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

13. Gross receipts from the sale of any motor vehicle taxable under the provisions of the motor vehicle excise tax laws of North Dakota. However, gross receipts from the rental of any motor vehicle for fewer than thirty days are not exempt but taxes imposed under home rule authority do not apply to such rentals.

SECTION 3. EFFECTIVE DATE. This Act is effective for rental of motor vehicles for which the rental contract term begins after June 30, 2001.

Approved April 23, 2001

Filed April 23, 2001

²⁷¹ Section 57-39.2-04 was also amended by section 3 of House Bill No. 1052, chapter 534, section 1 of House Bill No. 1392, chapter 537, and section 3 of Senate Bill No. 2299, chapter 535.

CHAPTER 537**HOUSE BILL NO. 1392**

(Representatives Monson, Herbel, R. Kelsch, Kingsbury)
(Senators Tallackson, Trenbeath)

**EDUCATIONAL, RELIGIOUS, OR CHARITABLE
ACTIVITY SALES TAX**

AN ACT to amend and reenact subsection 4 of section 57-39.2-04 of the North Dakota Century Code, relating to sales tax application to educational, religious, or charitable activities held in a publicly owned facility; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷² **SECTION 1. AMENDMENT.** Subsection 4 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

4. Gross receipts from sales of tickets, or admissions to state, county, district, and local fairs, and the gross receipts from educational, religious, or charitable activities, unless the gross receipts from the event exceed five thousand dollars and the activities are held in a publicly owned facility, when the entire amount of net receipts is expended for educational, religious, or charitable purposes and the gross receipts derived by any public school district if such receipts are expended in accordance with section 15.1-07-12. This exemption does not apply to regular retail sales that are in direct competition with retailers. Gross receipts from educational, religious, or charitable activities held in a publicly owned facility are exempt if the sponsoring organization is a nonprofit music or dramatic arts organization that is exempt from federal income taxation and is organized and operated for the presentation of live public performances of musical or theatrical works on a regular basis.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2001.

Approved March 21, 2001

Filed March 21, 2001

²⁷² Section 57-39.2-04 was also amended by section 3 of House Bill No. 1052, chapter 534, section 2 of Senate Bill No. 2181, chapter 536, and section 3 of Senate Bill No. 2299, chapter 535.

CHAPTER 538

HOUSE BILL NO. 1221

(Representatives Severson, Brandenburg, Devlin, Disrud)
(Senators Kroeplin, Wanzek)

WIND-POWERED FACILITY SALES TAX EXEMPTION

AN ACT to amend and reenact subdivision b of subsection 1 of section 57-39.2-04.2 and subdivision b of subsection 1 of section 57-40.2-04.2 of the North Dakota Century Code, relating to sales and use tax exemptions for certain wind-powered electrical generating facilities; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 1 of section 57-39.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

- b. "Power plant" means ~~an~~:
- (1) An electrical generating plant, together with and all additions thereto to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

SECTION 2. AMENDMENT. Subdivision b of subsection 1 of section 57-40.2-04.2 of the North Dakota Century Code is amended and reenacted as follows:

- b. "Power plant" means ~~an~~:
- (1) An electrical generating plant, together with and all additions thereto to the plant, which processes or converts lignite from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more.
 - (2) A wind-powered electrical generating facility, on which construction is completed before January 1, 2011, and all additions to the facility, which provides electrical power through wind generation and which has at least one single electrical energy generation unit with a nameplate capacity of one hundred kilowatts or more.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2001.

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

Approved March 26, 2001

Filed March 26, 2001

CHAPTER 539

SENATE BILL NO. 2352

(Senators Grindberg, Robinson, Urlacher)
(Representatives Boucher, Rennerfeldt, Svedjan)

NEW PRIMARY SECTOR BUSINESS SALES TAX EXEMPTION

AN ACT to amend and reenact section 57-39.2-04.3 of the North Dakota Century Code, relating to a sales and use tax exemption for purchases of computer and telecommunications equipment by a new primary sector business; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-04.3 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-04.3. (Effective before February 1, 1999, and after July 31, 2002)
Sales tax exemption for manufacturing or recycling machinery and equipment and primary sector business computer and telecommunications equipment.

1. Gross receipts from sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new manufacturing plant or in a physical or economic expansion of an existing manufacturing plant. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the plant.
2. Gross receipts from sales of machinery or equipment used directly in recycling of tangible personal property are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new recycling facility or in physical or economic expansion of an existing recycling facility. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the facility.
3. Gross receipts from sales of computer and telecommunications equipment that is an integral part of a new primary sector business or a physical or economic expansion of a primary sector business are exempt from taxes under this chapter. Purchase of replacement equipment is not exempt under this subsection.
4. To qualify for exemption at the time of purchase, the manufacturer or recycler, or primary sector business must receive from the commissioner a certificate stating that the machinery or equipment qualifies for the exemption. If a certificate is not received before the purchase, the manufacturer or recycler, or primary sector business must pay the tax and apply to the commissioner for a refund.

4. 5. If the machinery or equipment is purchased or installed by a contractor subject to tax under this chapter, the manufacturer ~~or~~, recycler, or primary sector business must apply for a refund of the amount remitted by the contractor.
5. 6. For purposes of this section, the following definitions apply:
- a. "Economic expansion" means an increase in production volume, employment, or the types of products that can be manufactured or recycled.
 - b. "Equipment":
 - (1) For purposes of a manufacturer or recycler, means any tangible personal property other than machinery used directly in the manufacturing or recycling process; and
 - (2) For purposes of a primary sector business other than manufacturing or recycling, means telecommunications equipment and computer equipment, printers, and software that are an integral part of the operations of the primary sector business.
 - c. "Machinery" means mechanical devices purchased or constructed by the manufacturer or recycler, or its agent, and used directly in manufacturing or recycling operations at any time from the initial stage where the raw material is first received at the plant site through the completion of the product, including packaging and all processes prior to transportation of the product from the site. The term includes electrical, mechanical, and electronic components that are part of machinery and necessary for a machine to produce its effect or result and environmental control equipment required to maintain certain levels of humidity or temperature in a special and limited area of the manufacturing facility where the regulation is essential for production to occur. The term includes computer equipment that controls or monitors the functions of machinery used directly in the manufacturing operations.
 - d. "Machinery" and "equipment":
 - (1) For purposes of a manufacturer or recycler, do not include handtools, buildings, or transportation equipment not used directly in manufacturing or recycling; machines and equipment used primarily in administrative, accounting, sales, or other nonmanufacturing segments of the business; any property that becomes a part of the manufactured or recycled product; or any other equipment or machinery not used directly in manufacturing or recycling; and
 - (2) For purposes of a primary sector business other than manufacturing or recycling, do not include equipment that is not an integral part of the operations of the primary sector business.
 - e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered

and certified seed, but does not include mining, refining, extracting oil and gas, or the generation of electricity.

- f. "Primarily" means more than fifty percent of the time the machinery or equipment is used.
- g. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth and which has been certified by the department of economic development and finance to be qualified under this subdivision.
- h. "Recycling" means collecting or recovering material that would otherwise be solid waste and performing all or part of the process in which the material becomes a raw material for manufacturing or becomes a product for sale at retail or wholesale.
- ~~h.~~ i. "Used directly" with respect to manufacturing means used primarily in the actual production, processing, fabrication, or assembly of raw materials, or partially finished materials, into the form in which the product is finalized, packaged, and ready for market. The term also means:
 - (1) To effect a direct physical change upon the tangible personal property.
 - (2) To guide or measure a direct physical change upon the property when the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.
 - (3) To test or measure the property on the production line or at a site in the location of production.
 - (4) To transport, convey, or handle the tangible personal property during the manufacturing.
 - (5) To package the product for sale and shipment.
 - (6) To conduct research and development and design activities related to the manufacturing process of the plant.

"Used directly" with respect to recycling means used solely in processing, compacting, altering, transporting, or otherwise affecting material as a part of the recycling process.

(Effective from February 1, 1999, through July 31, 2002) Sales tax exemption for manufacturing or recycling machinery and equipment and primary sector business computer and telecommunications equipment.

1. Gross receipts from sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new manufacturing plant or in a physical or economic expansion of an existing manufacturing plant.

Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the plant.

2. Gross receipts from sales of machinery or equipment used directly in recycling of tangible personal property are exempt from taxes under this chapter. To be exempt, the machinery or equipment must be used in a new recycling facility or in physical or economic expansion of an existing recycling facility. Purchase of replacement machinery or equipment is not exempt unless it results in a physical or economic expansion of the facility.
3. Gross receipts from sales of computer and telecommunications equipment that is an integral part of a new primary sector business or a physical or economic expansion of a primary sector business are exempt from taxes under this chapter. Purchase of replacement equipment is not exempt under this subsection.
4. To qualify for exemption at the time of purchase, the manufacturer or recycler, or primary sector business must receive from the commissioner a certificate stating that the machinery or equipment qualifies for the exemption. If a certificate is not received before the purchase, the manufacturer or recycler, or primary sector business must pay the tax and apply to the commissioner for a refund.
4. 5. If the machinery or equipment is purchased or installed by a contractor subject to tax under this chapter, the manufacturer or recycler, or primary sector business must apply for a refund of the amount remitted by the contractor.
5. 6. For purposes of this section, the following definitions apply:
 - a. "Economic expansion" means an increase in production volume, employment, or the types of products that can be manufactured or recycled.
 - b. "Equipment":
 - (1) For purposes of a manufacturer or recycler, means any tangible personal property other than machinery used directly in the manufacturing or recycling process; and
 - (2) For purposes of a primary sector business other than manufacturing or recycling, means telecommunications equipment and computer equipment, printers, and software that are an integral part of the operations of the primary sector business.
 - c. "Machinery" means mechanical devices purchased or constructed by the manufacturer or recycler, or its agent, and used directly in manufacturing or recycling operations at any time from the initial stage where the raw material is first received at the plant site through the completion of the product, including packaging and all processes prior to transportation of the product from the site. The term includes electrical, mechanical, and electronic components that are part of machinery and necessary for a machine to produce its effect or result and environmental control equipment required to

maintain certain levels of humidity or temperature in a special and limited area of the manufacturing facility where the regulation is essential for production to occur. The term includes computer equipment that controls or monitors the functions of machinery used directly in the manufacturing operations.

- d. "Machinery" and "equipment":
- (1) For purposes of a manufacturer or recycler, do not include handtools, buildings, or transportation equipment not used directly in manufacturing or recycling; machines and equipment used primarily in administrative, accounting, sales, or other nonmanufacturing segments of the business; any property that becomes a part of the manufactured or recycled product; or any other equipment or machinery not used directly in manufacturing or recycling; and
 - (2) For purposes of a primary sector business other than manufacturing or recycling, do not include equipment that is not an integral part of the operations of the primary sector business.
- e. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, and the refining of crude oil but does not include mining, other refining, extracting oil and gas, or the generation of electricity.
- f. "Primarily" means more than fifty percent of the time the machinery or equipment is used.
- g. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth and which has been certified by the department of economic development and finance to be qualified under this subdivision.
- h. "Recycling" means collecting or recovering material that would otherwise be solid waste and performing all or part of the process in which the material becomes a raw material for manufacturing or becomes a product for sale at retail or wholesale.
- ~~h.~~ i. "Used directly" with respect to manufacturing means used primarily in the actual production, processing, fabrication, or assembly of raw materials, or partially finished materials, into the form in which the product is finalized, packaged, and ready for market. The term also means:
- (1) To effect a direct physical change upon the tangible personal property.
 - (2) To guide or measure a direct physical change upon the property when the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.

- (3) To test or measure the property on the production line or at a site in the location of production.
- (4) To transport, convey, or handle the tangible personal property during the manufacturing.
- (5) To package the product for sale and shipment.
- (6) To conduct research and development and design activities related to the manufacturing process of the plant.

"Used directly" with respect to recycling means used solely in processing, compacting, altering, transporting, or otherwise affecting material as a part of the recycling process.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2001.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 540

SENATE BILL NO. 2063

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

CITY OR COUNTY SALES TAX INFORMATION DISCLOSURE

AN ACT to amend and reenact subsection 2 of section 11-09.1-05 and section 57-39.2-23 of the North Dakota Century Code, relating to sales and use tax levy powers of home rule counties and to confidentiality of city or county sales and use tax information; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 11-09.1-05 of the 1999 Supplement to 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 ~~which that~~ determines what property or acts are subject to, or exempt from, ad valorem ~~or sales and use~~ taxes. A charter or ordinance or act of the governing body of a home rule county may not supersede ~~the provisions of~~ 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.

²⁷³ **SECTION 2. AMENDMENT.** Section 57-39.2-23 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-23. Information deemed confidential - Certain releases of information authorized. Except as provided by law_;

²⁷³ Section 57-39.2-23 was also amended by section 2 of House Bill No. 1076, chapter 531.

1. ~~it is unlawful for the~~ The commissioner or ~~any~~ a person having an administrative duty under this chapter ~~to~~ may not divulge or ~~to~~ make known in any manner whatever the business affairs, operations, or information obtained by an investigation of any person, corporation, or limited liability company in the discharge of official duty, or the amount or sources of income, profits, losses, expenditures, or any particulars ~~thereof~~ set forth or disclosed in any return, or ~~to~~ permit any return or copy ~~thereof~~ or any book containing any abstract of particulars ~~thereof~~ to be seen or examined by any person.
2. The commissioner may authorize examination of those returns by other state officers and at the commissioner's discretion furnish to the tax officials of other states, the multistate tax commission, and the United States any information contained in the tax returns and reports and related schedules and documents filed under this chapter, and in the related report of an audit or investigation ~~made with respect thereto~~, if the information is furnished solely for tax purposes. The multistate tax commission may make the information available to the tax officials of any other state and the United States for tax purposes.
3. The commissioner may furnish to the workers compensation bureau, ~~the~~ job insurance division of job service North Dakota, and ~~the~~ secretary of state, upon request of the respective agency, a list or lists of holders of permits issued under this chapter or chapter 57-40.2, together with the addresses and tax department file identification numbers of those permitholders. The agency may use the list or lists only for the purpose of administering the duties of the agency.
4. The commissioner may furnish to ~~any~~ a state agency or ~~to~~ a private entity a list of names and addresses of holders of permits issued ~~pursuant to~~ under this chapter or chapter 57-40.2 for the purpose of jointly publishing or distributing publications or other information ~~pursuant to~~ under 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. The commissioner may make information pertaining to city lodging taxes, city lodging and restaurant taxes, or city or county sales and use taxes, contained in tax returns, reports, related schedules and documents, and reports of an audit or investigation available upon request to no more than two duly elected or appointed members of the governing body of a city or county for which collection and administration of the tax is required by statute or a tax collection agreement administered under section 57-01-02.1. The governing body of the city or county or its members may not divulge or make known in any manner the business affairs, operations, or other information acquired from the commissioner under this subsection concerning any person, corporation, limited liability company, or other entity unless the disclosure is by judicial order and for tax administration purposes only.
6. The commissioner or any person having an administrative duty under this chapter may announce that a permit has been revoked.

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

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 541**HOUSE BILL NO. 1211**
(Representatives Froseth, Dosch)
(Senators Every, Lyson)**STATE AID DISTRIBUTION FUND ALLOCATION**

AN ACT to create and enact a new subsection to section 57-39.2-26.1 of the North Dakota Century Code, relating to the allocation of revenues among political subdivisions through the state aid distribution fund; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁴ **SECTION 1.** A new subsection to section 57-39.2-26.1 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2003, and after that date is ineffective.

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

Approved March 16, 2001
Filed March 16, 2001

²⁷⁴ Section 57-39.2-26.1 was also amended by section 4 of Senate Bill No. 2299, chapter 535.

CHAPTER 542

SENATE BILL NO. 2455

(Senators Cook, Nething)

(Approved by the Delayed Bills Committee)

SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT

AN ACT to adopt a Simplified Sales and Use Tax Administration Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Agreement" means the streamlined sales and use tax agreement.
2. "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.
3. "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.
4. "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.
5. "Sales tax" means the tax levied under chapter 57-39.2.
6. "Seller" means any person making sales, leases, or rentals of personal property or services.
7. "State" means any state of the United States and the District of Columbia.
8. "Use tax" means the tax levied under chapter 57-40.2.

SECTION 2. Participation in multistate discussions. For reviewing or amending the agreement embodying the provisions contained in section 5 of this Act, the state shall enter into multistate discussions. For purposes of such discussions, the state must be represented by two members of the house of representatives and two members of the senate, to be appointed by the chairman of the legislative council. The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to reviewing or amending the agreement.

SECTION 3. Tax commissioner may enter agreement. Upon prior approval of the agreement by the legislative assembly, the tax commissioner may enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially

reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the tax commissioner may act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

The tax commissioner may take other actions reasonably required to implement this Act. Other actions authorized by this section include the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

The tax commissioner or the tax commissioner's designee is authorized to represent this state before the other states that are signatories to the agreement.

SECTION 4. Relationship to state law. A provision of the agreement authorized by this Act does not invalidate or amend, in whole or in part, any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state.

SECTION 5. Agreement requirements. The streamlined sales and use tax agreement must include provisions relating to a simplified state rate; uniform standards for sourcing of transactions, exempt sales, and returns and remittances; central registration for sellers; monetary allowances for certified service providers and sellers implementing new technological models; consumer privacy; and state administration of local sales and use taxes.

SECTION 6. Cooperating sovereigns. The agreement authorized by this Act is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

SECTION 7. Limited binding and beneficial effect.

1. The agreement authorized by this Act binds and inures only to the benefit of this state and the other member states. A person, other than a member state, is not an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.
2. Consistent with subsection 1, a person does not have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. A person may not challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.
3. A law of this state, or the application of a law, may not be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

SECTION 8. Seller and third-party liability.

1. A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section.

A seller who contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

2. A person who provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller who uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.
3. A seller who has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 543

HOUSE BILL NO. 1201 (Representatives Carlson, Huether) (Senators Robinson, Wardner)

MOTOR VEHICLE EXCISE AND USE TAXES

AN ACT to create and enact section 57-40.3-02.1 of the North Dakota Century Code, relating to motor vehicle excise tax imposed on motor vehicle leases; and to amend and reenact subsection 5 of section 57-40.3-01, subsection 6 of section 57-40.3-04, and section 57-40.3-12 of the North Dakota Century Code, relating to the definition of purchase price, exemptions from motor vehicle excise taxes, and administration of motor vehicle use taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise; provided, however, that when a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed in an amount not to exceed the total amount the purchaser has been compensated by an insurance company for ~~said~~ the loss but not to exceed the total amount of motor vehicle excise tax paid. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. In instances in which a licensed motor vehicle dealer places into the dealer's service a new vehicle for the purpose of renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value provided the vehicle replaced has been subject to motor vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly registered and licensed. "Purchase price" when the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" when a motor vehicle is manufactured by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means

the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle.

SECTION 2. Section 57-40.3-02.1 of the North Dakota Century Code is created and enacted as follows:

57-40.3-02.1. Tax imposed on motor vehicle lease.

1. With respect to any lease for a term of one year or more of a motor vehicle with an actual vehicle weight of ten thousand pounds [4535.92 kilograms] or less, all receipts due or consideration given or contracted to be given at the initiation of the lease and for the entire period of the lease, option to renew, or similar provision, or combination thereof, are deemed to have been paid or given and are subject to tax. Any tax due must be collected as provided in section 57-40.3-12 as of the date of first payment under the lease, option to renew, or similar provision, or combination thereof, or as of the date of registration under chapter 39-05.
2. With respect to any lease for a term of one year or more of a motor vehicle with an actual vehicle weight of ten thousand pounds [4535.92 kilograms] or less, originally leased outside this state and subsequently entering this state for use, any remaining receipts due or consideration to be given after the lessee brings the motor vehicle into this state are subject to tax as if the lessee had entered or exercised the lease, option to renew, or similar provision, or combination thereof, for the first time in this state, notwithstanding section 57-40.3-09.

²⁷⁵ **SECTION 3. AMENDMENT.** Subsection 6 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

6. Motor vehicles transferred between a lessee and lessor; provided, that the lessee has been in continuous possession of such vehicle for a period of one year or longer, and further provided that the lessor has paid either the tax imposed under ~~this chapter~~ section 57-40.3-02 at the time of titling or licensing the vehicle in this state or the use tax imposed by chapter 57-40.2.

SECTION 4. AMENDMENT. Section 57-40.3-12 of the North Dakota Century Code is amended and reenacted as follows:

57-40.3-12. Director to act as agent of tax commissioner in administration of motor vehicle use tax. The state tax commissioner is charged with the administration of this chapter. The tax commissioner may prescribe all rules and regulations, not inconsistent with the provisions of this chapter, necessary and advisable for the proper and efficient administration of this chapter. The collection of this motor vehicle excise tax must be carried out by the director of the department of transportation who shall act as the agent of the state tax commissioner and who is

²⁷⁵ Section 57-40.3-04 was amended by section 2 of House Bill No. 1325, chapter 334, and section 1 of Senate Bill No. 2209, chapter 544.

subject to all rules and regulations, not inconsistent with the provisions of this chapter, that may be prescribed by the tax commissioner. The provisions of this chapter may not be construed as preventing the collection of motor vehicle excise taxes by the tax commissioner when additional motor vehicle excise taxes are determined by the tax commissioner to be due for a lease, option to renew, or similar provision, or combination thereof, as provided under section 57-40.3-02.1 and in the course of any audit carried on by the tax commissioner. The director of the department of transportation shall furnish sufficient information to the tax commissioner, relating to all license or title applications for mobile homes or housetrailers purchased outside of the state of North Dakota for use in this state, to enable the tax commissioner to collect use tax on such mobile homes or housetrailers.

Approved April 5, 2001

Filed April 5, 2001

CHAPTER 544

SENATE BILL NO. 2209

(Senators Lyson, Bercier, Solberg)
(Representatives Aarsvold, Byerly, Pietsch)

PRISONER OF WAR MOTOR VEHICLE EXCISE TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemption for a motor vehicle acquired or leased by a resident who was a prisoner of war; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁶ **SECTION 1.** 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, or leased and in the possession of, a resident who was a prisoner of war and who registers the vehicle with a distinctive license plate issued by the department of transportation under subdivision o of subsection 2 of section 39-04-18. The owner or lessor of the motor vehicle who qualifies for the exemption under this subsection is entitled to a refund of taxes paid under this chapter on acquisition or leasing of the vehicle if the distinctive license plate was acquired not more than sixty days after acquisition or leasing of the vehicle.

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

Approved March 21, 2001
Filed March 21, 2001

²⁷⁶ Section 57-40.3-04 was created by section 3 of House Bill No. 1201, chapter 543, and section 2 of House Bill No. 1325, chapter 334.

CHAPTER 545

SENATE BILL NO. 2067 (Senator Krebsbach)

WIRELESS ENHANCED 911 SERVICE FEE

AN ACT to create and enact a new section to chapter 57-40.6 of the North Dakota Century Code, relating to the study of coordination of public safety answering points coverage; to amend and reenact sections 57-40.6-01, 57-40.6-02, 57-40.6-03, 57-40.6-03.1, 57-40.6-04, 57-40.6-05, 57-40.6-06, and 57-40.6-08 of the North Dakota Century Code, relating to a fee on telephone exchange access service and application of that fee to wireless service for support of wireless enhanced 911 service; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁷ **SECTION 1. AMENDMENT.** Section 57-40.6-01 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Emergency services communication system" means a statewide, countywide, or citywide radio system, land lines communication network, wireless service network, or ~~emergency~~ enhanced 911 (E911) telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for law enforcement, fire, medical, or other emergency services.
2. "FCC order" means federal communications commission order 94-102 (961 Federal Register 40348) and any other FCC order that affects the provision of wireless enhanced 911 service.
3. "Public safety answering point" or "PSAP" means a communications facility operated on a twenty-four hour basis which first receives 911 calls from persons in a 911 service area and which, as appropriate, may directly dispatch public safety services or extend, transfer, or relay 911 calls to appropriate public safety agencies.
4. "Subscriber service address" means, for purposes of wire line subscribers, the address where the telephone subscriber's wire line telephone device is used and, for purposes of wireless subscribers, the place of primary use, as that term is defined in the Mobile Telecommunications Sourcing Act (Pub. L. 106-252; 4 U.S.C. 124(8)).

²⁷⁷ Section 57-40.6-01 was also amended by section 1 of Senate Bill No. 2415, chapter 546.

5. "Telephone access line" means the principal access to the telephone company's switched network including an outward dialed trunk or access register.
6. "Telephone exchange access service" means service to any wire line telephone access line identified by a unique telephone number that provides local wire line access to the telecommunications network to a service subscriber and which enables the subscriber to access the emergency services communications system by dialing the digits 9-1-1 on the subscriber's telephone device.
7. "Wireless access line" means each active wireless telephone number assigned to a commercial mobile radio service subscriber, including end users of resellers.
8. "Wireless enhanced 911 service" means the service required to be provided by wireless service providers pursuant to the FCC order.
9. "Wireless service" means commercial mobile radio service as defined in 47 U.S.C. 332(d)(1) and includes:
 - a. Services commonly referred to as wireless; and
 - b. Services provided by any wireless real time two-way voice communication device, including radio-telephone communications used in:
 - (1) Cellular telephone service;
 - (2) Personal communications service; or
 - (3) The functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, personal communications service, or a network radio access line.
10. "Wireless service provider" means any entity authorized by the federal communications commission to provide wireless service within the state of North Dakota.

SECTION 2. AMENDMENT. Section 57-40.6-02 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-02. Authority of counties or cities to impose ~~excise tax~~ fee on telephone ~~exchange access lines~~ service and on wireless service - Procedure. The governing body of a county or city may impose ~~an excise tax~~ a fee on the use of telephone ~~exchange access lines~~ service and on the use of wireless service in accordance with the following requirements:

1. The governing body shall adopt a resolution that proposes the adoption of the ~~excise tax~~ fee permitted under this section. The resolution must specify an effective date for the ~~tax~~ fee which is no more than two years before the expected implementation date of the emergency services communication system to be funded by the ~~excise tax~~ fee. The resolution must include a provision for submitting the proposed ~~excise tax~~ fee to the electors of the county or city before the imposition of the

- ~~tax fee~~ is effective. The resolution must specify a ~~tax fee~~ that does not exceed one dollar per month per telephone access line and per wireless access line.
2. The question of the adoption of the ~~excise tax fee~~ must be submitted on a ballot on which the ballot title of the proposition includes the maximum monthly rate of the proposed ~~tax fee~~ authorized under subsection 1. The question of the adoption of the ~~excise tax fee~~ may be submitted to electors at a general, primary, or special election or at a school district election if the boundaries of the school district are coterminous with the boundaries of the governing body adopting the resolution proposing the adoption of the ~~excise tax fee~~. The ~~tax fee~~ is not effective unless it is approved by a majority of the electors voting on the proposition. The ballot must be worded so that a "yes" vote authorizes imposition of the ~~tax fee~~ for an initial six-year period.
 3. Any political subdivision that desires to increase the ~~tax fee~~, subject to the limitations in subsection 1, before the end of the six-year term, must use the same ballot procedure originally used to authorize the ~~tax fee~~. The new ballot question may apply to only the proposed increase and not to the original amount or the original term. If the increase is approved, the new amount may be collected for the balance of the original six-year term. If the ~~tax fee~~ authorized by this section is approved by the electors, the ~~tax fee~~ may be reimposed for six additional years without resubmitting the question to the electors.
 4. In any geographic area, only one political subdivision may impose the ~~excise tax fee~~ and imposition must be based on the subscriber service address.
 5. In the interest of public safety, where the customers exchange subscriber's telephone exchange access service boundary and the boundary of the political subdivision imposing the ~~tax fee~~ do not coincide, and where all of the political subdivisions within the exchange subscriber's telephone exchange access service boundary have not complied with subsection 1, and where a majority of the E911 subscribers within the exchange subscriber's telephone exchange access service boundary have voted for the ~~tax fee~~, an exchange customer residing a telephone exchange access service subscriber whose subscriber service address is outside the political subdivision may receive E911 services by signing a contract agreement with the political subdivision providing the emergency telecommunications system services communications system. The telephone ~~company~~ exchange access service provider may collect an additional ~~tax fee~~, equal in amount to the basic ~~tax fee~~ on those subscribers within the exchange boundary. The additional ~~tax fee~~ amounts collected must be remitted as provided in this chapter.
 6. A fee imposed under this section before August 1, 2001, may be extended to all wireless service at each subscriber service address within the area in which the fee is imposed only if that extension of the fee has been approved by a majority vote of the governing body of the city or county upon at least thirty days' prior notice in the official newspaper of the city or county that the governing body will consider the issue or by majority vote of the electors of the city or county voting on the question upon placement of the question on the ballot by the

governing body of the city or county at a regular or special city or county election.

SECTION 3. AMENDMENT. Section 57-40.6-03 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-03. Payment of ~~tax fee~~ by telephone ~~company~~ exchange access service and wireless service subscriber. The resolution imposing a ~~tax fee~~ under section 57-40.6-02 must include a requirement that the telephone ~~company~~ exchange access service provider and the wireless service provider collect the ~~tax fee~~ from the subscriber. In its billing statement or invoice to the subscriber, the telephone ~~company~~ exchange access service provider and the wireless service provider shall state the amount of the ~~tax fee~~ separately.

SECTION 4. AMENDMENT. Section 57-40.6-03.1 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-03.1. Enhanced 911 data base management charges. Any telephone ~~company~~ exchange access service provider charges for enhanced 911 data base management must be on a per telephone exchange access line service basis.

SECTION 5. AMENDMENT. Section 57-40.6-04 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-04. Tax Fee collection procedure. A resolution adopted under section 57-40.6-02 must include adequate procedures for the administration and collection of the ~~tax fee~~, including a provision for reimbursement to the telephone ~~company~~ exchange access service provider and the wireless service provider for the actual costs of administration in collection of the ~~tax fee~~, not to exceed five percent of the fee collected. The resolution must also include a provision that the ~~tax fee~~ be paid by the telephone ~~company~~ exchange access service provider and the wireless service provider within thirty days after it is collected from the subscriber.

SECTION 6. AMENDMENT. Section 57-40.6-05 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-05. Restriction on use of ~~tax fee~~ proceeds. The ~~county~~ governing body may not use the proceeds of the ~~tax fee~~ imposed under section 57-40.6-02 for any purpose other than ~~establishing or operating the emergency services communication system~~ as provided in this section.

1. Within twenty-four months after the extension of the fee to wireless access lines under subsection 6 of section 57-40.6-02, the governing body shall request enhanced 911 service from all wireless carriers providing service as of that date within the governing body's jurisdiction.
2. The governing body shall hold the portion of the revenues from the fee on wireless service unexpended in a separate fund until such time as the governing body makes a request for wireless enhanced 911 service or adopts a statement certifying that it is capable of receiving and utilizing wireless enhanced 911 service, whichever is earlier, provided that those revenues may not be expended until the agreements required under subsection 3 have been executed.

3. The governing body or its designee shall enter into agreements directly with each wireless service provider for only that provider's services necessary to implement, maintain, and operate wireless enhanced 911 service as provided by law. A governing body may not reimburse a wireless service provider for tower construction or for the extension of a wireless service provider's infrastructure which is not directly related to providing wireless enhanced 911 service.
4. Revenues in excess of the obligations incurred under the agreements specified by this section, as determined on a monthly basis, may only be used for implementing, maintaining, or operating the emergency services communication system.
5. The governing body or its designee shall keep records to show expenditures for wireless service providers separately from expenditures for telephone exchange access service providers.

²⁷⁸ **SECTION 7. AMENDMENT.** Section 57-40.6-06 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-06. Data base. ~~In 911 systems that have been approved by the state emergency services communication system advisory committee, any telecommunications company~~ Any telephone exchange access service provider providing emergency 911 service shall provide, on an annual basis, current customer names, addresses, and telephone numbers to each public service answering point within each 911 system ~~and shall update the information according to a schedule prescribed by the state 911 advisory committee's standards and guidelines.~~ Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, 18 U.S.C. 2703 (C)(1)(B)(iii).

SECTION 8. 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 or emergency instructions - Liability.

1. A public agency, public safety agency, ~~or local exchange telecommunications company~~ telephone exchange access service provider, or wireless service provider that provides access to an emergency system ~~at or below cost,~~ or any officer, agent, or employee of any public agency, public safety agency, ~~or local exchange telecommunications company~~ telephone exchange access service provider, or wireless services provider, 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.

²⁷⁸ Section 57-40.6-06 was also amended by section 2 of Senate Bill No. 2415, chapter 546.

2. A person who gives emergency instructions through a system as provided under this chapter, to persons rendering services in an emergency at another location, or any person following such instructions in rendering such services, is not liable for any civil damages as a result of issuing or following the instructions, unless issuing or following the instructions constitutes willful and wanton misconduct or gross negligence.
3. This section does not waive, limit, or modify any existing immunity or other defense of the state or any political subdivision, or any of its agencies, departments, commissions, boards, officers, or employees, nor does it create any claim for relief against any of these entities.

SECTION 9. A new section to chapter 57-40.6 of the North Dakota Century Code is created and enacted as follows:

Reports of coordination of public safety answering points coverage.

The governing body of a city or county, which adopted a fee on telephone exchange access service and wireless service under this chapter, shall make an annual report of the income, expenditures, and status of its emergency services communication system. The annual report must be submitted to the state radio division and to the public safety answering points coordinating committee. The committee is composed of three members, one appointed by the North Dakota 911 association, one appointed by the North Dakota association of counties, and one appointed by the office of management and budget to represent the state radio division. The public safety answering points coordinating committee shall file its report with the legislative council by November first of each even-numbered year.

SECTION 10. EFFECTIVE DATE. This Act becomes effective on August 1, 2001.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 546

SENATE BILL NO. 2415

(Senator Fischer)
(Representative S. Kelsh)

911 SYSTEM DATA BASE INFORMATION USE

AN ACT to create and enact a new subsection to section 57-40.6-01 of the North Dakota Century Code, relating to a definition; and to amend and reenact sections 57-40.6-06 and 57-40.6-07 of the North Dakota Century Code, relating to a 911 system data base.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷⁹ **SECTION 1.** A new subsection to section 57-40.6-01 of the North Dakota Century Code is created and enacted as follows:

"Unpublished" means information that is not published or available from directory assistance.

²⁸⁰ **SECTION 2. AMENDMENT.** Section 57-40.6-06 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-06. Data base. ~~In 911 systems that have been approved by the state emergency services communication system advisory committee, any A~~ telecommunications company providing emergency 911 service shall provide, ~~on an annual basis,~~ current customer names, addresses, and telephone numbers to each 911 coordinator or public service safety answering point within each 911 system ~~and shall update the information according to a schedule prescribed by the state 911 advisory committee's standards and guidelines.~~ Information provided under this section must be provided in accordance with the transactional record disclosure requirements of the federal Electronics Communications Privacy Act of 1986, ~~48 U.S.C. 2703 (C)(1)(B)(iii)~~ 18 U.S.C. 2703(c)(1)(B)(iii), and in a manner that identifies the names and telephone numbers that are unpublished.

SECTION 3. AMENDMENT. Section 57-40.6-07 of the North Dakota Century Code is amended and reenacted as follows:

57-40.6-07. Use of the furnished information. ~~Names, addresses,~~ Unpublished names and telephone numbers ~~provided to~~ generated by a 911 coordinator or 911 public service safety answering point or provided to a 911 coordinator or public safety answering point under section 57-40.6-06 are private data confidential and may be used only for verifying the location or identity, or both, for response purposes ~~only,~~ of a person calling a 911 answering point for emergency help. ~~The information furnished may not be used or disclosed by the public service~~

²⁷⁹ Section 57-40.6-01 was also amended by section 1 of Senate Bill No. 2067, chapter 545.

²⁸⁰ Section 57-40.6-06 was also amended by section 7 of Senate Bill No. 2067, chapter 545.

~~answering point or its agents or employees for any other purpose except under a court order.~~ Published names and telephone numbers maintained by a 911 coordinator or public safety answering point are exempt records as defined in section 44-04-17.1 but must be provided upon request to the treasurer and auditor of the county served by the 911 coordinator for the purpose of verifying and correcting names and addresses used for official purposes.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 547

HOUSE BILL NO. 1409

(Representatives Koppelman, Pietsch, Severson)
(Senators Klein, Tallackson)

AMBULANCE DISPATCHING AND 911 STANDARDS

AN ACT to create and enact two new sections to chapter 57-40.6 of the North Dakota Century Code, relating to the dispatching of ambulances and standards and guidelines for 911 telephone systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 57-40.6 of the North Dakota Century Code are created and enacted as follows:

Standards and guidelines.

1. The governing body of the local governmental unit with jurisdiction over an emergency 911 telephone system shall be or shall designate a governing committee of the emergency 911 telephone system which shall:
 - a. Designate a 911 coordinator.
 - b. Enter written agreements with participating organizations and agencies.
 - c. Designate lines of authority.
 - d. Provide for a written plan for rural addressing, if applicable, which has been coordinated with the local postal authorities. After January 1, 1993, a rural plan must conform to the modified burkle addressing plan. A plan in use before this date does not have to conform with the modified burkle addressing plan. If implemented, all rural addressing signs must comply with the manual on uniform traffic control devices standards.
 - e. Provide for an update of the emergency 911 telephone system's data base annually by obtaining current records from the appropriate telecommunications company.
 - f. Define a records retention plan for all printed and recorded records in accordance with jurisdictional requirements.
 - g. Encourage that coin-free dialing is available for 911 calls.
 - h. Define a mechanism to differentiate between emergency 911 telephone calls from other calls.
 - i. Provide for written operating procedures.

- j. Require the public safety answering point that initially receives an emergency call to be responsible for handling that call. If a transfer of an emergency call is made to a secondary public safety answering point, the initial public safety answering point may not disconnect from the three-way call unless mutually agreed upon by the two public safety answering point dispatchers. Upon this agreement, the secondary public safety answering point becomes responsible for the call.
 - k. Beginning June 1, 2002, ensure that the closest available emergency medical service is dispatched to the scene of medical emergencies regardless of city, county, or district boundaries. The state department of health shall provide emergency 911 telephone systems with necessary geographical information to assist in the implementation of this subdivision.
 2. The governing committee may:
 - a. Require appropriate liability protection.
 - b. Create a user advisory board.
 - c. Conduct an annual statistical evaluation of services.
 - d. Publish an annual financial report in the official county newspaper.
 3. An emergency 911 telephone system must access and dispatch the following services:
 - a. Law enforcement.
 - b. Fire service.
 - c. Emergency medical service.
 4. An emergency 911 telephone system may access and dispatch the following services:
 - a. Poison control.
 - b. Suicide prevention.
 - c. Emergency management.
 - d. Any other related service in subsection 3 or 4.
 5. The governing committee of an emergency 911 telephone system shall provide that that system:
 - a. Provides twenty-four-hour, seven-day-a-week coverage.
 - b. Dispatches and communicates with service identified in subsection 3.
 - c. Records all incoming 911 calls and related radio and telephone communications.

- d. Provides alternate measures in the event of an emergency 911 telephone system failure, including an alternate public safety answering point seven-digit number.
 - e. Ensures an adequate grade of service that is statistically based by population to assure access to an emergency 911 telephone system.
 - f. Does not accept one-way call-in alarms or devices.
 - g. Provides access to an emergency 911 telephone system through specialized telecommunications equipment as defined under section 54-44.8-01.
6. An emergency 911 telephone system may:
 - a. Locate the emergency caller utilizing electronic equipment.
 - b. Provide a mechanism for investigating false or prank calls.
 7. An emergency 911 telephone system must include at least one public safety answering point.
 8. A cellular 911 call must be routed to the appropriate 911 public safety answering point.
 9. An emergency 911 telephone call must be answered by a dispatcher who has completed training through an association of public safety communications officials course or equivalent course. An emergency 911 dispatch center is required to offer emergency medical dispatch instructions on all emergency medical calls. Prearrival instructions must be offered by a dispatcher who has completed an emergency medical dispatch course approved by the division of emergency health services. Prearrival medical instructions may be given through a mutual aid agreement.

Annual report to legislative council. State radio, in cooperation with entities affected by this Act, shall facilitate the review of emergency 911 telephone system standards and guidelines and shall report annually to the legislative council on the operation of and any recommended changes in the standards and guidelines.

Approved April 5, 2001
Filed April 5, 2001

CHAPTER 548

SENATE BILL NO. 2454

(Senators Wanzek, Kroeplin)
(Representatives Brandenburg, Monson, Nicholas)

BIODIESEL FUEL TAX REDUCTION

AN ACT to create and enact a new subsection to section 57-43.2-01 of the North Dakota Century Code, relating to the definition of biodiesel fuel; to amend and reenact section 24-02-01.5, subsection 1 of section 57-43.2-02, and subsection 1 of section 57-43.2-03 of the North Dakota Century Code, relating to a special fuels tax reduction for sales of diesel fuel blended with biodiesel fuel; 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 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24-02-01.5. 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~~ 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.

SECTION 2. A new subsection to section 57-43.2-01 of the North Dakota Century Code is created and enacted as follows:

"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.

SECTION 3. AMENDMENT. Subsection 1 of section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 4. AMENDMENT. Subsection 1 of section 57-43.2-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of 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.

SECTION 5. EFFECTIVE DATE. This Act becomes 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 6. EXPIRATION DATE. This Act is for taxable events occurring from the effective date of this Act under section 5 of this Act through June 30, 2003, and is thereafter ineffective.

Approved April 19, 2001
Filed April 19, 2001

CHAPTER 549

HOUSE BILL NO. 1064

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

OIL AND GAS TAX PAYMENT AND COMPUTATION

AN ACT to amend and reenact section 57-51-02.2, subsection 2 of section 57-51-05, subsection 2 of section 57-51-09, section 57-51-19, subsections 3 and 10 of section 57-51.1-01, and subsection 3 of section 57-51.1-03 of the North Dakota Century Code, relating to publication of the gas base rate adjustment, tax payment, computation of tax on incorrect returns, time for claim of credits or refunds, and date limitations under the oil and gas gross production tax and oil extraction tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 is exempt from taxation. The tax levied must attach to the whole production, including the royalty interest. The tax on gas must be calculated by taking the taxable production in mcf times the gas tax rate.

1. ~~For fiscal year beginning July 1, 1991, the gas tax rate is four cents; for fiscal years beginning July 1, 1992, and subsequent years, the~~ The gas tax rate is four cents times the gas base rate adjustment for ~~the~~ each fiscal year as calculated ~~pursuant to~~ under subsection 2.
2.
 - a. ~~On or before May 15, 1992, and annually thereafter, the~~ The tax department shall annually determine the gas base rate adjustment and the resulting gas tax rate for ~~the~~ each fiscal year beginning on ~~the following~~ July first.
 - b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of which is the annual average of the gas fuels producer price index, commodity code 05-3, as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year, and the denominator of which is seventy-five and seven-tenths.
 - c. The tax department shall provide the gas base rate adjustment and the gas tax rate for the fiscal year, as determined under this subsection, to affected producers by written notice mailed on or before June first. ~~In addition, the tax department shall publish the adjustment as a rule in the North Dakota Administrative Code.~~
 - d. If the index used to determine the gas base rate adjustment is substantially revised, or if the base year for the index is changed, the department by administrative rule shall make appropriate adjustment to the method used to determine the gas base rate

adjustment to ensure a result which is reasonably consistent with the result which would have been obtained had the index not been revised or the base year changed.

- e. If the gas fuels producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

SECTION 2. AMENDMENT. Subsection 2 of section 57-51-05 of the North Dakota Century Code is amended and reenacted as follows:

2. On oil or gas produced and sold at the time of production, the gross production tax thereon must be paid by the purchaser, and the purchaser ~~shall and is hereby~~ authorized to deduct in making settlement with the producer or royalty owner, the amount of tax paid; provided, that in the event oil ~~on which the gross production tax becomes due produced~~ is not sold ~~at the time of production~~ but is retained by the producer, the tax on the oil not sold must be paid by the producer including the tax due on royalty oil not sold; provided further, that in settlement with the royalty owner the producer has the right to deduct the amount of the tax paid on royalty oil or to deduct therefrom royalty oil equivalent in value at the time the tax becomes due with the amount of the tax paid.

SECTION 3. AMENDMENT. Subsection 2 of section 57-51-09 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~For taxable periods beginning before January 1, 1991, the tax commissioner has six years after the due date of the original return or six years after the original return is filed, whichever period expires later, to assess additional tax found due. For taxable periods beginning after December 31, 1990, and before January 1, 1993, the time to assess is five years. For taxable periods beginning after December 31, 1992, and before January 1, 1995, the time to assess is four years. Effective for taxable periods beginning after December 31, 1994, the~~ The time to assess additional tax found due is three years after the due date of the original return or three years after the original return is filed, whichever period expires later. However, if there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, any additional tax determined to be due may be assessed any time within six years after the due date of the return or six years after the return was filed, whichever period expired later.

SECTION 4. AMENDMENT. Section 57-51-19 of the North Dakota Century Code is amended and reenacted as follows:

57-51-19. Claim for credit or refund. In all cases of overpayment, duplicate payment, or payment made in error, the commissioner may issue a certificate stating therein the facts and the amount of the refund to which the taxpayer may be entitled. Upon presentation of the certificate to the office of management and budget, a warrant shall be issued to the taxpayer for the purpose of refunding any overpayment, duplicate payment, or payment made in error out of the unapportioned gross production tax in the state treasury and a pro rata share thereof must be charged against the county entitled to share in the tax. Interest arising from refunds of overpayments, duplicate payments, and erroneous payments must be allowed and

paid at the rate of ten percent per annum and accrues for payment from sixty days after the due date of the return or after the return was filed or after the tax was fully paid, whichever comes later.

A taxpayer may file a claim for credit or refund of an overpayment of tax. ~~For taxable periods beginning before January 1, 1991, the claim must be filed within six three years of the due date of the return or six three years after the return was filed. For taxable periods beginning after December 31, 1990, and before January 1, 1993, the taxpayer must file a claim within five years. For taxable periods beginning after December 31, 1992, and before January 1, 1995, the taxpayer must file a claim within four years. For taxable periods beginning after December 31, 1994, the taxpayer must file the claim within three years.~~ However, if there is a change in tax liability on any return by an amount in excess of twenty-five percent of the amount of tax liability reported on a return, a claim for refund of tax may be filed within six years after the due date of the return or six years after the return was filed, whichever period expires last.

²⁸¹ **SECTION 5. AMENDMENT.** Subsections 3 and 10 of section 57-51.1-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Horizontal reentry well" means a well that was not initially drilled and completed as a horizontal well, including any well initially plugged and abandoned as a dry hole, which is reentered and recompleted as a horizontal well ~~after March 31, 1995.~~
10. "Stripper well property" means a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] during any preceding consecutive twelve-month period ~~beginning after December 31, 1972.~~ Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.

²⁸² **SECTION 6. AMENDMENT.** Subsection 3 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. For a well drilled and completed ~~after April 27, 1987~~ as a vertical well, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from any well drilled and completed as a horizontal well ~~after March 31, 1995,~~ is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to

²⁸¹ Section 57-51.1-01 was also amended by section 1 of Senate Bill No. 2205, chapter 550.

²⁸² Section 57-51.1-03 was also amended by section 3 of Senate Bill No. 2205, chapter 550.

well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil for any consecutive five-month period in any year is thirty-three dollars or more. However, the exemption is reinstated if, after the aforementioned trigger provision becomes effective, the average price of a barrel of crude oil is less than thirty-three dollars for any consecutive five-month period in any year.

Approved March 16, 2001

Filed March 16, 2001

CHAPTER 550

SENATE BILL NO. 2205

(Senators Wardner, Krauter, Lyson)
(Representatives Haas, Rennerfeldt, Warner)

OIL EXTRACTION TAX TRIGGER DETERMINATION

AN ACT to amend and reenact sections 57-51.1-01, 57-51.1-02, and 57-51.1-03 of the North Dakota Century Code, relating to determination of the trigger price that determines application of oil extraction tax rates and exemptions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸³ **SECTION 1. AMENDMENT.** Section 57-51.1-01 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-01. Definitions for oil extraction tax. For the purposes of the oil extraction tax law, the following words and terms shall have the meaning ascribed to them in this section:

1. "Average daily production" of a well means the qualified maximum total production of oil from the well during a calendar month period divided by the number of calendar days in that period; and "qualified maximum total production" of a well means that the well must have been maintained at the maximum efficient rate of production as defined and determined by rule adopted by the industrial commission in furtherance of its authority under chapter 38-08.
2. "Average price" of a barrel of crude oil means the monthly average of the daily closing price for a barrel of west Texas intermediate cushioning crude oil, as those prices appear in the Wall Street Journal, midwest edition, minus two dollars and fifty cents. When computing the monthly average price, the most recent previous daily closing price must be considered the daily closing price for the days on which the market is closed.
3. "Horizontal reentry well" means a well that was not initially drilled and completed as a horizontal well, including any well initially plugged and abandoned as a dry hole, which is reentered and recompleted as a horizontal well after March 31, 1995.
4. "Horizontal well" means a well with a horizontal displacement of the wellbore drilled at an angle of at least eighty degrees within the productive formation of at least three hundred feet [91.44 meters].

²⁸³ Section 57-51.1-01 was also amended by section 5 of House Bill No. 1064, chapter 549.

5. "Oil" means petroleum, crude oil, mineral oil, casinghead gasoline, and all liquid hydrocarbons that are recovered from gas on the lease incidental to the production of the gas.
6. "Property" means the right which arises from a lease or fee interest, as a whole or any designated portion thereof, to produce oil. A producer shall treat as a separate property each separate and distinct producing reservoir subject to the same right to produce crude oil; provided, that such reservoir is recognized by the industrial commission as a producing formation that is separate and distinct from, and not in communication with, any other producing formation.
7. "Qualifying secondary recovery project" means a project employing water flooding. To be eligible for the tax reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have achieved for six consecutive months an average production level of at least twenty-five percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, a secondary recovery project must be certified as qualifying by the industrial commission and the project operator must have obtained incremental production as defined in subsection 5 of section 57-51.1-03.
8. "Qualifying tertiary recovery project" means a project for enhancing recovery of oil which meets the requirements of section 4993(c), Internal Revenue Code of 1954, as amended through December 31, 1986, and includes the following methods for recovery:
 - a. Miscible fluid displacement.
 - b. Steam drive injection.
 - c. Microemulsion.
 - d. In situ combustion.
 - e. Polymer augmented water flooding.
 - f. Cyclic steam injection.
 - g. Alkaline flooding.
 - h. Carbonated water flooding.
 - i. Immiscible carbon dioxide displacement.
 - j. New tertiary recovery methods certified by the industrial commission.

It does not include water flooding, unless the water flooding is used as an element of one of the qualifying tertiary recovery techniques described in this subsection, or immiscible natural gas injection. To be eligible for the tax reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial

commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have achieved for at least one month a production level of at least fifteen percent above the level that would have been recovered under normal recovery operations. To be eligible for the tax exemption provided under section 57-51.1-03 and subsequent thereto the rate reduction provided under section 57-51.1-02, a tertiary recovery project must be certified as qualifying by the industrial commission, the project operator must continue to operate the unit as a qualifying tertiary recovery project, and the project operator must have obtained incremental production as defined in subsection 5 of section 57-51.1-03.

9. "Royalty owner" means an owner of what is commonly known as the royalty interest and shall not include the owner of any overriding royalty or other payment carved out of the working interest.
10. "Stripper well property" means a "property" whose average daily production of oil, excluding condensate recovered in nonassociated production, per well did not exceed ten barrels per day for wells of a depth of six thousand feet [1828.80 meters] or less, fifteen barrels per day for wells of a depth of more than six thousand feet [1828.80 meters] but not more than ten thousand feet [3048 meters], and thirty barrels per day for wells of a depth of more than ten thousand feet [3048 meters] during any preceding consecutive twelve-month period beginning after December 31, 1972. Wells which did not actually yield or produce oil during the qualifying twelve-month period, including disposal wells, dry wells, spent wells, and shut-in wells, are not production wells for the purpose of determining whether the stripper well property exemption applies.
11. "Trigger price" means thirty-five dollars and fifty cents, as indexed for inflation. By December thirty-first of each year, the tax commissioner shall compute an indexed trigger price by applying to the current trigger price the rate of change of the producer price index for industrial commodities as calculated and published by the United States department of labor, bureau of labor statistics, for the twelve months ending June thirtieth of that year and the indexed trigger price so determined is the trigger price for the following calendar year.
12. "Two-year inactive well" means any well that has not produced oil in more than one month in the two years before the date of application to the industrial commission for certification as a two-year inactive well.

SECTION 2. AMENDMENT. Section 57-51.1-02 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-02. Imposition of oil extraction tax. There is hereby imposed an excise tax, to be known as the "oil extraction tax", upon the activity in this state of extracting oil from the earth, and every owner, including any royalty owner, of any part of the oil extracted is deemed for the purposes of this chapter to be engaged in the activity of extracting that oil.

The rate of tax is six and one-half percent of the gross value at the well of the oil extracted, except that the rate of tax is four percent of the gross value at the well of the oil extracted in the following situations:

1. For oil produced from wells drilled and completed after April 27, 1987, commonly referred to as new wells, and not otherwise exempt under section 57-51.1-03;
2. For oil produced from a secondary or tertiary recovery project that was certified as qualifying by the industrial commission before July 1, 1991;
3. For oil that does not qualify as incremental oil but is produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991;
4. For incremental oil produced from a secondary or tertiary recovery project that is certified as qualifying by the industrial commission after June 30, 1991, and which production is not otherwise exempt under section 57-51.1-03; or
5. For oil produced from a well that receives an exemption pursuant to subsection 4 of section 57-51.1-03 after June 30, 1993, and which production is not otherwise exempt under section 57-51.1-03.

However, if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period in any year is thirty-three dollars or more, then the rate of tax for the following months on oil extracted from all taxable wells is six and one-half percent of the gross value at the well of the oil extracted-

~~However, if after the aforementioned trigger provision becomes effective, until the average price of a barrel of crude oil is less than thirty-three dollars the trigger price for each month in any consecutive five-month period in any year, in which case the rate of tax reverts to four percent of the gross value at the well of the oil extracted for any wells drilled and completed after April 27, 1987, and not otherwise exempt under section 57-51.1-03, and for a qualifying secondary recovery project or for a qualifying tertiary recovery project subject to a reduced rate under subsections 1 through 5.~~

²⁸⁴ **SECTION 3. AMENDMENT.** Section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-03. Exemptions from oil extraction tax. The following activities are specifically exempted from the oil extraction tax:

1. The activity of extracting from the earth any oil that is exempt from the gross production tax imposed by chapter 57-51.
2. The activity of extracting from the earth any oil from a stripper well property.
3. For a well drilled and completed after April 27, 1987, the initial production of oil from the well is exempt from any taxes imposed under this chapter for a period of fifteen months, except that oil produced from

²⁸⁴ Section 57-51.1-03 was also amended by section 6 of House Bill No. 1064, chapter 549.

any well drilled and completed as a horizontal well after March 31, 1995, is exempt from any taxes imposed under this chapter for a period of twenty-four months. Oil recovered during testing prior to well completion is exempt from the oil extraction tax. The exemption under this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period in any year is thirty-three dollars or more. However, the exemption is reinstated if, after the ~~mentioned~~ trigger provision becomes effective, the average price of a barrel of crude oil is less than ~~thirty-three dollars~~ the trigger price for each month in any consecutive five-month period in any year.

4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator files a notice of intention to begin a work-over project with the industrial commission prior to commencement of the project and establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded 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 in any year is thirty-three dollars or more. However, the exemption is reinstated if, after the ~~mentioned~~ trigger provision becomes effective, the average price of a barrel of crude oil is less than ~~thirty-three dollars~~ the trigger price for each month in any consecutive five-month period in any year.
5.
 - a. The incremental production from a secondary recovery project which has been certified as a qualified project by the industrial commission after July 1, 1991, is exempt from any taxes imposed under this chapter for a period of five years from the date the incremental production begins.
 - b. The incremental production from a tertiary recovery project which has been certified as a qualified project by the industrial commission subsequent to June 30, 1991, is exempt from any taxes imposed under this chapter for a period of ten years from the date the incremental production begins.
 - c. For purposes of this subsection, incremental production is defined in the following manner:
 - (1) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where there has not been a secondary recovery project, incremental production means the difference between the total amount of oil produced from the unit during the secondary recovery

project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the secondary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.

- (2) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence prior to July 1, 1991, and where the industrial commission cannot establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during a new secondary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
- (3) For purposes of determining the exemption provided for in subdivision a and with respect to a unit where a secondary recovery project was in existence before July 1, 1991, and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the new secondary recovery project and the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced includes both primary production and production that occurred as a result of the secondary recovery project that was in existence before July 1, 1991. The industrial commission shall determine the amount of oil that would have been produced from the unit if the new secondary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the new secondary recovery project is certified.
- (4) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there has not been a secondary recovery project, incremental production

means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the amount of primary production from the unit. For purposes of this paragraph, primary production means the amount of oil which would have been produced from the unit if the tertiary recovery project had not been commenced. The industrial commission shall determine the amount of primary production in a manner which conforms to the practice and procedure used by the commission at the time the project is certified.

- (5) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project, incremental production means the difference between the total amount of oil produced during the tertiary recovery project and the amount of production which would be equivalent to the average monthly production from the unit during the most recent twelve months of normal production reduced by a production decline rate of ten percent for each year. The industrial commission shall determine the average monthly production from the unit during the most recent twelve months of normal production and must upon request or upon its own motion hold a hearing to make this determination. For purposes of this paragraph, when determining the most recent twelve months of normal production the industrial commission is not required to use twelve consecutive months. In addition, the production decline rate of ten percent must be applied from the last month in the twelve-month period of time.
 - (6) For purposes of determining the exemption provided for in subdivision b and with respect to a unit where there is or has been a secondary recovery project and where the industrial commission can establish an accurate production decline curve, incremental production means the difference between the total amount of oil produced from the unit during the tertiary recovery project and the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced. For purposes of this paragraph, the total amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced includes both primary production and production that occurred as a result of any secondary recovery project. The industrial commission shall determine the amount of oil that would have been produced from the unit if the tertiary recovery project had not been commenced in a manner that conforms to the practice and procedure used by the commission at the time the tertiary recovery project is certified.
- d. The industrial commission shall adopt rules relating to this exemption that must include procedures for determining incremental production as defined in subdivision c.
6. The production of oil from a two-year inactive well, as determined by the industrial commission and certified to the state tax commissioner, for a

period of ten years after the date of receipt of the certification. The exemption under 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 ~~in any year is thirty-three dollars or more~~. However, the exemption is reinstated if, after the ~~aforementioned~~ trigger provision becomes effective, the average price of a barrel of crude oil is less than ~~thirty-three dollars~~ the trigger price for each month in any consecutive five-month period ~~in any year~~.

7. The production of oil from a horizontal reentry well, as determined by the industrial commission and certified to the state tax commissioner, for a period of nine months after the date the well is completed as a horizontal well. The exemption under 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 ~~in any year is thirty-three dollars or more~~. However, the exemption is reinstated if, after the ~~aforementioned~~ trigger provision becomes effective, the average price of a barrel of crude oil is less than ~~thirty-three dollars~~ the trigger price for each month in any consecutive five-month period ~~in any year~~.
8. The initial production of oil from a well is exempt from any taxes imposed under this chapter for a period of sixty months if:
 - a. The well is located within the boundaries of an Indian reservation;
 - b. The well is drilled and completed on lands held in trust by the United States for an Indian tribe or individual Indian; or
 - c. The well is drilled and completed on lands held by an Indian tribe if the interest is in existence on August 1, 1997.

SECTION 4. EFFECTIVE DATE. This Act is effective for oil production occurring after June 30, 2001.

Approved April 9, 2001
Filed April 10, 2001

CHAPTER 551**SENATE BILL NO. 2428**

(Senators Tallackson, Trenbeath)
(Representatives Froelich, Maragos, Schmidt, Warner)

TAX STRUCTURE FOR EDUCATION FUNDING STUDY

AN ACT to provide for a legislative council study of the state and local tax structure for funding of elementary and secondary education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying the state and local tax structure for funding of elementary and secondary education to determine the feasibility and desirability of enhanced state funding to school districts for delivery of core curriculum instruction, the equity of the existing degree of reliance on property tax revenues for elementary and secondary education funding, and whether improved efficiency is attainable in delivery of elementary and secondary education services. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 552**SENATE BILL NO. 2448**

(Senators Stenehjem, Christmann, Fischer)
(Representatives Carlson, Nelson)

TOBACCO, ALCOHOL, AND FUELS TAX STUDY

AN ACT to provide for a legislative council study of compliance and jurisdictional issues arising under the tobacco, alcohol, and fuels tax laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying compliance and jurisdictional issues under the tobacco, alcohol, and fuels tax laws. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved March 16, 2001

Filed March 16, 2001

TOWNSHIPS

CHAPTER 553

SENATE BILL NO. 2328

(Senators Fischer, Lee, Wardner)
(Representatives Belter, Brekke, S. Kelsh)

TOWNSHIP SPECIAL ASSESSMENT DISTRICTS

AN ACT to create and enact a new subsection to section 57-15-20.2, a new section to chapter 57-15, a new section to chapter 58-01, a new subsection to section 58-03-07, and a new chapter to title 58 of the North Dakota Century Code, relating to the definition of the term freeholder of a township, the relevy of property taxes omitted by mistake, and to the creation of special assessment districts by townships; to provide for retroactive application; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁵ **SECTION 1.** 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 special assessment districts in accordance with section 5 of this Act.

SECTION 2. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Mistake in levy - Levy increase the following year - Levy reverts.

1. Notwithstanding sections 57-15-01.1 and 57-15-14, if a mistake occurred in the 2000 tax year which would result in ten 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, 2001, 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 2001 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.
2. If the resulting general fund levy for the 2001 or 2002 tax year is above one hundred eighty-five mills, the taxing district need not comply with chapter 57-16.

²⁸⁵ Section 57-15-20.2 was also amended by section 16 of House Bill No. 1202, chapter 246, section 2 of House Bill No. 1405, chapter 511, and section 2 of Senate Bill No. 2334, chapter 513.

3. After the 2002 tax year, the taxing district's general fund levy must revert to the general fund levy for the 1999 tax year plus any increase authorized by law.
4. The 2001 and 2002 taxable years may not be used as a "base year" under section 57-15-01.1, and may not be considered a "prior school year" under section 57-15-14.

SECTION 3. A new section to chapter 58-01 of the North Dakota Century Code is created and enacted as follows:

Freeholder defined. As used in this title, unless the context or subject matter requires otherwise, "freeholder" means the legal title owner of the surface estate in real property.

²⁸⁶ **SECTION 4.** A new subsection to section 58-03-07 of the North Dakota Century Code is created and enacted as follows:

To establish special assessment districts in accordance with section 5 of this Act.

SECTION 5. A new chapter to title 58 of the North Dakota Century Code is created and enacted as follows:

Power of townships to defray expenses of improvements by special assessment. A township, upon complying with the provisions of this chapter, may defray the expenses of improvements through special assessment districts.

Improvement districts to be created. For the purpose of making an improvement project and defraying the cost by special assessment, a board of township supervisors may create an improvement district upon petition of sixty percent of the freeholders in a proposed improvement district area. The improvement district must be designated by a name appropriate to the type of improvement and by a number distinguishing it from other improvement districts.

Size and form of improvement districts. Each improvement district must be of such size and form as to include all properties, which in the judgment of the board of township supervisors will be benefited by the construction of the improvement project that is proposed to be made in or for the district.

Approval of plans, specifications, and cost estimates - Special meeting. After an improvement district has been created, the board of township supervisors shall direct a competent 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. The board of township supervisors shall provide thirty days' written notice by first-class mail to each freeholder within the improvement district at the address shown on the records of the county treasurer and shall publish a notice in a legal newspaper published in the township or, if there is no such newspaper, then in the county's official newspaper at least ten days prior to a special meeting for public disclosure of the findings of the engineer.

²⁸⁶ Section 58-03-07 was also amended by section 20 of House Bill No. 1202, chapter 246.

Election for proceeding. At the special township meeting for public disclosure of the findings of the engineer, the freeholders of the township in attendance are entitled to vote on the question of whether to proceed with the improvement project. Upon approval by sixty percent or more of the votes cast at the meeting or votes filed with the township clerk within fifteen days after the meeting, the improvement project may proceed. A freeholder affected by the project is entitled to one vote for each dollar of the proposed special assessment against the freeholder's property within the proposed improvement district. If there is more than one owner of a parcel of property, the votes available for the parcel must be prorated among the owners in accordance with each owner's percentage interest in the property. If fewer than sixty percent of the votes cast or filed on the question approve the project, the election result is a bar against proceeding further with the improvement project described in the plans and specifications. An election result barring proceeding further with the improvement project does not preclude the payment of any costs incurred in developing the plans, specifications, cost estimates, or other costs which must be paid from the general fund of the township. If the costs incurred pose a financial burden on the general levy of a township of forty percent or more, the board of township supervisors may levy and collect assessments from the improvement district in yearly assessments not exceeding five years. If under forty percent, the township may use methods approved by law.

Election approval of project - Assessment levy. If the election under this chapter results in approval of a project, the board of township supervisors may cause the improvement to be made and may levy and collect assessments from the improvement district.

Appeal notice - Special meeting - Assessment determination - Limitations. Any aggrieved freeholder may appeal the special assessment against the freeholder's real property by providing the township clerk a written notice of appeal, stating the grounds upon which the appeal is based, within twenty days after the special township meeting. The clerk shall notify the township board of supervisors of the appeal and schedule a special meeting to hear the appeals by publishing a notice of the special meeting at least ten days before the meeting in a legal newspaper published in the township or, if no such newspaper exists, in the county's official newspaper. Any aggrieved freeholder who submitted an appeal may be heard and may present reasons to change the freeholder's assessment at the special meeting. The board of township supervisors may hear the appeals and reasons and may increase or diminish any of the assessments as it may deem just, providing that the total amount of the assessments may not be changed and an assessment as adjusted may not exceed the benefits to the parcel of land on which it is assessed.

SECTION 6. RETROACTIVE APPLICATION OF ACT. Section 2 of this Act applies retroactively to cases arising after December 31, 1999.

SECTION 7. EXPIRATION DATE. Section 2 of this Act is effective through the 2005 tax year and after that date is ineffective.

Approved April 23, 2001

Filed April 23, 2001

CHAPTER 554

HOUSE BILL NO. 1327

(Representatives Eckre, Aarsvold, Kretschmar, Nicholas)
(Senators O'Connell, Wardner)

TOWNSHIP OFFICER COMPENSATION

AN ACT to amend and reenact sections 58-06-02, 58-07-01, 58-08-01, and 58-09-02 of the North Dakota Century Code, relating to compensation of township officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 58-06-02 of the North Dakota Century Code is amended and reenacted as follows:

58-06-02. Compensation of supervisors. A township supervisor ~~shall~~ is entitled to receive as compensation for services fifteen twenty dollars a day for each day necessarily devoted to the work of ~~the~~ a supervisor's office not exceeding six hundred dollars in a calendar year. Additional compensation over six hundred dollars may be provided for reimbursement of expenses and twenty cents per mile [1.61 kilometers] mileage at a rate not exceeding the allowable mileage rate accepted by the United States internal revenue service for each mile [1.61 kilometers] necessarily traveled in the performance of a supervisor's duties; but the compensation may not exceed four hundred fifty dollars in any one year.

SECTION 2. AMENDMENT. Section 58-07-01 of the North Dakota Century Code is amended and reenacted as follows:

58-07-01. Compensation of clerk. The township clerk ~~shall~~ is entitled to receive as compensation for services fifteen twenty dollars a day for each day necessarily devoted to the work of the clerk's office not exceeding six hundred dollars in a calendar year. The clerk shall receive as reimbursement for expenses twenty cents per mile [1.61 kilometers] Additional compensation over six hundred dollars may be provided for reimbursement of expenses and mileage at a rate not exceeding the allowable mileage rate accepted by the United States internal revenue service for each mile [1.61 kilometers] actually and necessarily traveled in the performance of the clerk's duties. The clerk may not receive more than four hundred fifty dollars in any year. In those townships in which the offices of township clerk and treasurer have been merged, the person elected to fill the new office ~~shall~~ is entitled to receive compensation as township clerk only.

SECTION 3. AMENDMENT. Section 58-08-01 of the North Dakota Century Code is amended and reenacted as follows:

58-08-01. Compensation of treasurer. ~~Each~~ The township treasurer shall is entitled to receive as compensation for services fifteen twenty dollars a day for each day necessarily devoted to the work of the treasurer's office not exceeding six hundred dollars in a calendar year. Additional compensation over six hundred dollars may be provided for reimbursement of expenses and twenty cents for each mile [1.61 kilometers] mileage at a rate not exceeding the allowable mileage rate accepted by the United States internal revenue service for each mile [1.61 kilometers] necessarily traveled in the performance of such the treasurer's duties.

The township treasurer may not ~~receive more than four hundred fifty dollars in any year nor~~ be allowed a percentage on the balance turned over to the treasurer's successor in office.

SECTION 4. AMENDMENT. Section 58-09-02 of the North Dakota Century Code is amended and reenacted as follows:

58-09-02. Compensation of assessor. The township assessor ~~shall receive as~~ is entitled to compensation for services a in the sum determined by the board of township supervisors for the time actually and necessarily employed in making and completing the assessment of the township and ~~twenty cents per mile~~ [1.61 kilometers] mileage at a rate not exceeding the allowable mileage rate accepted by the United States internal revenue service for each mile [1.61 kilometers] necessarily traveled in the performance of the duties of office. The compensation must be paid out of the township treasury upon an itemized statement setting forth the actual time spent in the work of assessor, approved by the board of township supervisors.

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 555

SENATE BILL NO. 2315

(Senators Andrist, Lindaas)
(Representatives D. Johnson, Schmidt)

POUNDS AND POUNDMASTERS

AN ACT to create and enact two new sections to chapter 58-13 of the North Dakota Century Code, relating to immunity from liability and to estrays; and to amend and reenact sections 58-13-01, 58-13-03, 58-13-04, and 58-13-05 of the North Dakota Century Code, relating to pounds and poundmasters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 58-13-01 of the North Dakota Century Code is amended and reenacted as follows:

58-13-01. Poundmaster to have direction of pound. Any pound established by the township electors must be under the care and direction of such a poundmaster as is chosen or appointed for that purpose by the board of township supervisors. If a poundmaster is not appointed, the chairman of the board of township supervisors may contract with the county sheriff to perform the duties. The poundmaster shall enforce the ordinances, bylaws, or resolutions enacted by the board of township supervisors.

SECTION 2. AMENDMENT. Section 58-13-03 of the North Dakota Century Code is amended and reenacted as follows:

58-13-03. Poundmaster has lien - Lien for all legal charges and expenses. The poundmaster has a lien on every ~~horse, ass, mule, sheep, lamb, goat, hog, and neat~~ animal taken into the pound for the full amount of the poundmaster's legal actual charges and expenses and is entitled to the possession of any ~~such~~ animal until the same charges and expenses are paid.

SECTION 3. AMENDMENT. Section 58-13-04 of the North Dakota Century Code is amended and reenacted as follows:

58-13-04. Notice of impounding impoundment - Foreclosure of lien. If the legal actual charges and expenses of the poundmaster are not paid and the animals are not removed within ~~ten~~ five days after they are impounded, the poundmaster shall give notice by ~~posting in the three most public places in~~ publication in the official newspaper of the township notices that if one has been designated or, if one has not been designated, in the official newspaper of the county in which the animals, describing them, are impounded and. The notice must provide that unless ~~they~~ the animals are ~~taken away~~ removed and the ~~fees~~ charges and expenses paid within ~~thirty~~ ten days after the date of the notice, the poundmaster ~~will~~ shall sell them the animals at a public auction at the place where the township meetings usually are held sale, as provided in the notice. On the day designated in the notice, the poundmaster shall expose the animals for sale and sell them to the highest bidder.

SECTION 4. AMENDMENT. Section 58-13-05 of the North Dakota Century Code is amended and reenacted as follows:

58-13-05. Humane treatment of animals - Poundmaster may destroy worthless animals. The poundmaster shall provide humane treatment and care for any animal in the pound. If any animal taken up by the poundmaster is deemed by the poundmaster to be worthless and cannot be sold, the poundmaster may offer the animal for adoption. If after five days the animal has not been adopted, the poundmaster shall destroy the animal and dispose of it, and the. The board of township supervisors shall pay the poundmaster out of the general fund of the township.

SECTION 5. A new section to chapter 58-13 of the North Dakota Century Code is created and enacted as follows:

Immunity from liability. A poundmaster or an agent of the poundmaster who has custody of an animal under this chapter, is acting in an official capacity, and making a good-faith effort to comply with this chapter is immune from any civil or criminal liability for acts taken or omitted while attempting to comply with this chapter.

SECTION 6. A new section to chapter 58-13 of the North Dakota Century Code is created and enacted as follows:

Estray - Notification of North Dakota stockmen's association. If the poundmaster comes into possession of any animal that the poundmaster believes is an estray, the poundmaster shall contact the brand inspector and deliver or arrange for the delivery of the animal to a licensed livestock auction market. The brand inspector shall provide for the disposition of the animal under chapter 36-22. The poundmaster may recover charges and expenses for the delivery of the estray.

Approved April 19, 2001
Filed April 19, 2001

TRUSTS, USES, AND POWERS

CHAPTER 556

SENATE BILL NO. 2187

(Senators T. Mathern, Fischer, Thane)
(Representatives Kretschmar, Hawken, Mahoney)

TRUSTS FOR INDIVIDUALS WITH DISABILITIES STUDY

AN ACT to provide for a legislative council study of trusts for individuals with disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. TRUSTS FOR INDIVIDUALS WITH DISABILITIES - LEGISLATIVE COUNCIL STUDY. During the 2001-02 interim, the legislative council shall consider studying trusts for individuals with disabilities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

Approved April 17, 2001
Filed April 17, 2001

WAREHOUSING AND DEPOSITS

CHAPTER 557

SENATE BILL NO. 2074

(Agriculture Committee)

(At the request of the Public Service Commission)

GRAIN WAREHOUSE AND BUYER CEASE AND DESIST ORDERS

AN ACT to create and enact a new section to chapter 60-02 and a new section to chapter 60-02.1 of the North Dakota Century Code, relating to cease and desist orders against grain warehouses and grain buyers; and to amend and reenact sections 60-02-07, 60-02.1-07, 60-02.1-30, and 60-04-03.1 of the North Dakota Century Code, relating to the licensing fees for public warehouses and for grain buyers and assets of the trust fund upon the insolvency of a grain warehouse or grain buyer licensee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-07 of the 1999 Supplement to 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. 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 ~~two~~ three hundred ~~fifty~~ 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]. 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. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Cease and desist. Whenever an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the commission, upon its own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the commission. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 3. AMENDMENT. Section 60-02.1-07 of the 1999 Supplement to 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. 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 ~~two~~ three hundred ~~fifty~~ dollars. The annual license fee for a roving grain buyer is ~~one~~ two hundred ~~fifty~~ dollars.

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 4. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Cease and desist. Whenever an entity engages in an activity or practice that is contrary to the provisions of this chapter or related rules, the commission, upon its own motion without complaint, with or without hearing, may order the entity to cease and desist from the activity until further order of the commission. Such orders may include any corrective action up to and including license suspensions. Cease and desist orders must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

SECTION 5. AMENDMENT. Section 60-02.1-30 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

60-02.1-30. Trust fund established. Upon the insolvency of any licensee, a trust fund must be established for the benefit of claimants 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.
- ~~3.~~ 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 6. AMENDMENT. Section 60-04-03.1 of the 1999 Supplement to 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 receipt holders 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.
- ~~3.~~ 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.
4. 5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse.
- ~~5.~~ 6. Unencumbered accounts receivable for grain sold at the time or following the filing of a claim that precipitates an insolvency prior to the filing of the claim that precipitated an insolvency.
- ~~6.~~ 7. Unencumbered equity in grain hedging accounts.
- ~~7.~~ 8. Unencumbered grain product assets.

CHAPTER 558

SENATE BILL NO. 2413

(Senators Wanzek, Urlacher)
(Representatives Brandenburg, Lloyd, Nelson, Nicholas)

AGRICULTURAL CONTRACT MEDIATION

A BILL for an Act to create and enact a new section to chapter 60-02 and a new section to chapter 60-02.1 of the North Dakota Century Code, relating to agricultural contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Agricultural contracts - Mediation or arbitration. If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 60-02-05, the parties shall attempt to resolve the disagreements through mediation or arbitration.

SECTION 2. A new section to chapter 60-02.1 of the North Dakota Century Code is created and enacted as follows:

Agricultural contracts - Mediation and arbitration. If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 60-02.1-05, the parties shall attempt to resolve the disagreements through mediation or arbitration.

Approved April 19, 2001
Filed April 19, 2001

WATERS

CHAPTER 559

SENATE BILL NO. 2256

(Senators Traynor, Espegard)
(Representatives D. Johnson, Schmidt)

DEVILS LAKE BONDS EXTENSION

AN ACT to amend and reenact section 11 of chapter 535 of the 1999 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 is amended and reenacted as follows:

SECTION 11. EXPIRATION DATE. ~~The~~ 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 provided, however, that. 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, 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 March 28, 2001

Filed March 28, 2001

CHAPTER 560

SENATE BILL NO. 2264

(Senators Espegard, Christenson, Flakoll, Holmberg, Tollefson, Traynor)

GRAND FORKS BONDS EXTENSION

AN ACT to amend and reenact section 11 of chapter 535 of the 1999 Session Laws, relating to the issuance of bonds for a flood control or reduction project in Grand Forks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11 of chapter 535 of the 1999 Session Laws is amended and reenacted as follows:

SECTION 11. EXPIRATION DATE. ~~The~~ Except for the issuance of bonds for a flood control or reduction project in Grand Forks, 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 provided, however, that. The authority of the commission to issue bonds as provided in chapter 61-02.1 for construction of a flood control or reduction project in Grand Forks is effective through June 30, 2003, 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 18, 2001
Filed April 18, 2001

CHAPTER 561

SENATE BILL NO. 2285

(Senators Fischer, G. Nelson, Traynor)
(Representatives Belter, Brekke, Delmore)

SECTION 404 PROGRAM ASSUMPTION

AN ACT to repeal section 12 of chapter 594 of the 1993 Session Laws, as amended by section 1 of chapter 589 of the 1995 Session Laws, relating to the effective date of the assumption of the section 404 program of the Clean Water Act by the state; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 12 of chapter 594 of the 1993 Session Laws, as amended by section 1 of chapter 589 of the 1995 Session Laws, is repealed.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the water development trust fund in the state treasury, not otherwise appropriated, the sum of \$800,000, or so much of the sum as may be necessary, to the state water commission for the purpose of assuming jurisdiction over and administering the section 404 program of the Clean Water Act, for the biennium beginning July 1, 2001, and ending June 30, 2003. The state water commission is authorized five additional full-time equivalent positions to implement this Act.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on the date the state engineer certifies to the governor that a program has been designed to effectively assume responsibility for the section 404 program of the Clean Water Act and the state water commission is ready to assume those responsibilities. The governor shall notify the secretary of state and the legislative council of the effective date of this Act.

Approved April 24, 2001
Filed April 24, 2001

CHAPTER 562

HOUSE BILL NO. 1151

(Natural Resources Committee)
(At the request of the State Water Commission)

DEVILS LAKE OUTLET CONSTRUCTION AND BONDING

AN ACT to create and enact a new section to chapter 61-02 of the North Dakota Century Code, relating to construction of a Devils Lake outlet; to amend and reenact subdivision e of subsection 1 of section 61-01-26.2, subsections 7 and 9 of section 61-02.1-01, and subsection 3 of section 61-02.1-02 of the North Dakota Century Code, relating to bonding for a Devils Lake outlet; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision e of subsection 1 of section 61-01-26.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. Devils Lake outlet to the Sheyenne River and to west Stump Lake: Seventeen million five hundred thousand dollars in state funds and thirty-two million five hundred thousand dollars in federal funds. The total state cost-share of seventeen million five hundred thousand dollars includes mitigation costs and will be bonded, requiring a local repayment estimated at one million five hundred thousand dollars per year, with the split between state and local loan repayment to be determined. Before bonds may be issued for a Devils Lake outlet, construction of the outlet must be approved by the state water commission ~~and the federal government must have agreed to participate in construction of the outlet.~~

²⁸⁷ **SECTION 2.** A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

Devils Lake outlet - Eminent domain - Design and build construction. In the construction of an outlet from Devils Lake, the commission:

1. Shall make a reasonable and diligent effort to acquire the property interests needed by negotiation. The commission is deemed to have made a reasonable and diligent effort if it has contacted or attempted to contact the owner of the property interest needed at least three times over a thirty-day period. If the commission is unable to acquire the interest needed by negotiation, then it may take possession of the interests needed after making a written offer to purchase and depositing the amount of the offer with the clerk of the district court of the county in

²⁸⁷ Section 61-02-23.2 was amended by section 12 of House Bill No. 1023, chapter 22.

which the property interest is located. The clerk shall immediately notify the property owner in writing of the deposit. Within thirty days after receiving notice, the property owner may appeal to district court by serving notice of appeal upon the commission and the matter must be tried in the manner prescribed under chapter 32-15.

2. May issue, when it determines that it would be advantageous to the state or that it is necessary in order to construct the outlet in a timely manner, a request for proposals to design and build the outlet. The request for proposals must require that each proposal submitted contain a single price that includes the cost to design and build the outlet. Neither chapter 48-01.1 or 54-44.7, nor any other law requiring competitive bidding applies to the construction of the outlet if the commission determines to use the design and build procedure. The commission shall select the proposal that it determines is the most advantageous to the state.

SECTION 3. AMENDMENT. Subsections 7 and 9 of section 61-02.1-01 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

7. In furtherance of the public purposes set forth in subsections 3 and 4, the state water commission may issue bonds under chapter 61-02 to finance the cost of one or more of the projects identified in this subsection, provided that:
 - a.
 - (1) The state water commission may only issue bonds for construction of an outlet from Devils Lake when either the state water commission or the United States authorizes construction of an outlet and either the state water commission or a federal agency has developed a plan addressing damage to basic infrastructure such as roads, culverts, and bridges; riverbank erosion; downstream flooding; and increased water treatment costs caused by or resulting from construction of the outlet;
 - (2) ~~The state water commission or the project sponsor must sign a project cooperation agreement with the United States army corps of engineers;~~
 - ~~(3)~~ The outlet from Devils Lake to west Stump Lake must comply with any environmental impact statement or National Environmental Policy Act provisions required under federal law; and
 - ~~(4)~~ (3) Bonds may not be issued if an order for injunctive relief has been issued by a court of competent jurisdiction enjoining construction of an outlet from Devils Lake to the Sheyenne River or to west Stump Lake.
 - b. The state water commission may only issue bonds to finance the nonfederal cost-share of the Garrison diversion unit when the Congress of the United States enacts legislation for the completion of the Garrison diversion unit, which may include the delivery of water to the northwest area water supply project; southwest pipeline project; Turtle Lake irrigation district; Nesson-Valley

irrigation district; Elk Charbon irrigation district; the Williston irrigation project; the Oakes irrigation project; other irrigation, municipal, rural, and industrial water supply projects; augmented streamflow and ground water recharge projects; development of a Red River valley water supply; and delivery of Missouri River water to the Sheyenne River.

9. Notwithstanding this section, the state water commission may not issue bonds authorized under subsection 5 ~~or subdivision a of subsection 7~~ for a project unless federal funds have been appropriated for that project.

SECTION 4. AMENDMENT. Subsection 3 of section 61-02.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The state water commission bonds issued as provided in subsection 7 of section 61-02.1-01 for a Devils Lake outlet to the Sheyenne River and to west Stump Lake or other projects listed in subdivision b of subsection 7 of section 61-02.1-01 may not exceed, in the aggregate, twenty million dollars, plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves. The state water commission may use all or part of the proceeds of bonds issued as provided in subsection 7 of section 61-02.1-01 and the proceeds are appropriated to pay the costs of such projects or to match, in a ratio no greater than required by the federal government, any federal funds available for the projects identified in subsection 7 of section 61-02.1-01 and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The commission may require any political subdivision affected by Devils Lake flooding to participate in the cost of construction of an outlet from Devils Lake to the Sheyenne River and to west Stump Lake by providing matching funds in a percentage of the construction costs determined by the commission to be reasonable in light of the benefits to be received by that political subdivision in relation to benefits received by all benefited political subdivisions. Any local matching fund requirement must be determined by the commission and the affected political subdivisions must be informed of their matching fund obligation prior to issuance of bonds pursuant to this chapter.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 3, 2001
Filed April 3, 2001

CHAPTER 563**SENATE BILL NO. 2128**

(Natural Resources Committee)

(At the request of the State Water Commission)

WATER COMMISSION MEMBER CONFLICT OF INTEREST

AN ACT to create and enact a new section to chapter 61-02 of the North Dakota Century Code, relating to conflicts of interest of members of the state water commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

Conflict of interest.

1. A member of the commission who has a direct or indirect personal or pecuniary interest in a matter before the commission must disclose that fact to the commission and may not participate in or vote on that particular matter.
2. Sections 12.1-13-02, 12.1-13-03, and 48-02-12 do not apply to contracts in which a member of the commission is directly or indirectly interested if the requirements of subsection 1 have been met.

Approved March 16, 2001

Filed March 16, 2001

CHAPTER 564

SENATE BILL NO. 2182

(Senators Solberg, O'Connell, Tollefson)
(Representatives Boucher, Gunter, Nelson)

PRESCRIPTIVE WATER RIGHTS

AN ACT to amend and reenact section 61-04-22 of the North Dakota Century Code, relating to prescriptive water rights.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04-22 of the North Dakota Century Code is amended and reenacted as follows:

61-04-22. Prescriptive water right. ~~Any~~ A person who used or attempted to appropriate water from any source for beneficial use over a period of twenty years prior to July 1, 1963, ~~shall be~~ is deemed to have acquired a right to the use of ~~such the~~ the water without having filed or prosecuted an application to acquire a right to the beneficial use of ~~such the~~ the waters if the user shall have, by ~~July 1, 1965~~ December 31, 2001, filed with the state engineer an application for a water permit. If the state engineer ~~found~~ finds that the application ~~substantiated~~ substantiates the claim and it ~~was~~ is approved, it ~~shall be~~ is a perfected water permit with a priority date relating back to the date when the first step was taken to appropriate the water in the quantity stated in the application was first appropriated. The first step may have consisted of survey work, drilling, ditching, damming, diking, or other actual preparation for the appropriation of water provided that the first step was followed by due diligence resulting in the appropriation of water. If the prescriptive user ~~failed~~ fails to file an application for a water permit with the state engineer by ~~July 1, 1965,~~ such December 31, 2001, the prescriptive water right ~~shall~~ must be declared abandoned and forfeited. ~~Any~~ A prescriptive water permit acquired under this section ~~shall be~~ is subject to forfeiture for nonuse as prescribed by sections 61-04-23 through 61-04-25. The state engineer shall publish in each official county newspaper published in this state notice of the deadline for filing for an appropriation permit under this section.

Approved April 9, 2001

Filed April 10, 2001

CHAPTER 565

HOUSE BILL NO. 1284

(Representatives Rennerfeldt, DeKrey, Gulleson, Lloyd)
(Senators Solberg, Wanzek)

IRRIGATION DISTRICT BOUNDARIES

AN ACT to amend and reenact sections 61-05-13, 61-06-01, 61-10-31, and 61-10-38 of the North Dakota Century Code, relating to organization, government, and boundaries of irrigation districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-05-13 of the North Dakota Century Code is amended and reenacted as follows:

61-05-13. State engineer to make order establishing irrigation district - Calling election - Dividing district - Contents of order. If the state engineer ~~shall have found~~ finds and ~~determined~~ determines that the establishment of the proposed irrigation district is advisable, and that the plan proposed for irrigating the lands therein is practicable and economically sound, the state engineer shall make an order establishing ~~such the~~ irrigation district, subject to the approval of the electors of the district at an election called by the state engineer for that purpose. If the district embraces more than ~~ten~~ twenty thousand irrigable acres [~~4046.86~~ 8093.72 irrigable hectares] of land, the state engineer by ~~such the~~ order shall divide the district into five or seven divisions or precincts as the state engineer ~~shall deem~~ determines necessary for the convenience of the electors of the district. The divisions or precincts ~~shall~~ must be as nearly equal in size as may be deemed practicable, ~~such the divisions shall~~ must be numbered, and one director ~~shall~~ must be elected from, and by the electors of, each division. If an elector owns land in more than one division, the elector ~~shall~~ must cast all the elector's votes for director and be eligible for election as a director in the division in which the majority of the elector's land subject to assessment lies. ~~Such The order shall~~ must set forth:

1. The time and place of holding ~~such the~~ election.
2. The boundaries of the district.
3. That a petition sufficient in form and substance was filed with the state engineer.
4. That due and reasonable notice of time and place of hearing on petition was given to the qualified electors of the proposed irrigation district.

A copy of ~~such the~~ order ~~shall~~ must be filed with the county auditor of each county in which the irrigation district is situated. ~~Such The order shall be~~ is prima facie evidence of the matter and facts therein stated.

SECTION 2. AMENDMENT. Section 61-06-01 of the North Dakota Century Code is amended and reenacted as follows:

61-06-01. Board of directors of irrigation district - Terms - Vacancies. If an irrigation district contains less than ~~ten~~ twenty thousand irrigable acres [~~4046.86~~

8093.72 irrigable hectares] of land and is not divided into precincts or divisions, the board of directors ~~thereof shall consist~~ consists of five directors who must be residents of the state and electors of the district and must be elected at large. Two directors elected at the election for the organization of the district ~~shall~~ serve until the first Tuesday in April following the first regular district election, and three ~~directors shall~~ serve until the first Tuesday in April following the second regular election.

If an irrigation district contains ~~ten~~ twenty thousand irrigable acres [~~4046.86~~ 8093.72 irrigable hectares] or more, it must be divided into five or seven divisions or precincts, as the case may be, and one director must be elected from and by the electors of each division or precinct.

If an irrigation district contains ~~ten~~ twenty thousand irrigable acres [~~4046.86~~ 8093.72 irrigable hectares] or more and is divided into five divisions or precincts, the board of directors of ~~such the~~ irrigation district ~~shall consist~~ consists of five directors. Two directors elected at the election for the organization of the district ~~shall~~ serve until the first Tuesday in April following the first regular district election, and three directors ~~shall~~ serve until the first Tuesday in April following the second regular district election.

If an irrigation district contains ~~ten~~ twenty thousand irrigable acres [~~4046.86~~ 8093.72 irrigable hectares] or more and is divided into seven divisions or precincts, the board of directors of ~~such the~~ irrigation district ~~shall consist~~ consists of seven directors. Three directors elected at the election for the organization of the district ~~shall~~ serve until the first Tuesday in April following the first regular district election, and four directors ~~shall~~ serve until the first Tuesday in April following the second regular district election.

The terms of office of the directors elected at ~~such the~~ first election for the organization of the district must be determined by lot at their first meeting. Directors elected at subsequent elections ~~shall~~ serve for four years and until their successors are duly elected and qualified. In case the office of any director becomes vacant, the remaining members of the board shall fill the vacancy by appointment. A director appointed to fill a vacancy ~~shall serve~~ serves the unexpired term of the director whose office ~~he that director~~ has been appointed to fill. ~~In the event that~~ If vacancies occur in the offices of a majority of the directors of an irrigation district, the remaining members and the state engineer shall fill the vacancies; and ~~in the event that~~ if the offices of all the directors become vacant, the state engineer shall appoint the members of the board and they ~~shall~~ serve until the next regular election of the district. Their successors in office must then be elected to serve the unexpired term of the directors whose offices became vacant. The unexpired term of office ~~which that each director thus elected shall fill~~ fills must be determined by lot.

At the regular irrigation district election in 1984, the secretary of any existing irrigation district which has only three directors shall include in the notice of election a statement that irrigation districts must have five directors, and that the two new positions for director will be filled at the upcoming district election. The notice must also state that any elector desiring to be a candidate for the office of district director and to have the elector's name appear on the ballot for one of the new openings for the office of director must file a request with the secretary of the board not less than twenty days before the election. For the irrigation districts with only three directors, the directors elected for the two new positions, and the director elected to fill the office of the existing director whose regular term would have expired in 1984, must be elected to four-year terms. The remaining directors of existing irrigation districts with three directors whose terms do not expire in 1984 shall serve until the next regular election of the irrigation district, which must be in 1986. Directors elected at

the regular election of an irrigation district in 1986 must then be elected for four-year terms.

SECTION 3. AMENDMENT. Section 61-10-31 of the North Dakota Century Code is amended and reenacted as follows:

61-10-31. Redivision of district into divisions. When lands are included in an irrigation district by means of the procedure described in this chapter, and if the district will contain after inclusion of ~~such~~ the lands ~~ten~~ twenty thousand irrigable acres [~~4046.86~~ 8093.72 irrigable hectares] or more, at least thirty days ~~prior to~~ before the next general election, the board shall make an order dividing or redividing ~~such~~ the district into divisions in conformity with section 61-05-13. ~~Such~~ The divisions ~~shall~~ must be as nearly equal in size as may be practicable and they ~~shall~~ must be numbered, with one director thereafter elected by and from each division.

SECTION 4. AMENDMENT. Section 61-10-38 of the North Dakota Century Code is amended and reenacted as follows:

61-10-38. Elimination of divisions of district. When lands are excluded from an irrigation district by means of the procedure described in this chapter, and if the district will contain less than ~~ten~~ twenty thousand irrigable acres [~~4046.86~~ 8093.72 irrigable hectares] after the exclusion of ~~such~~ the lands, the board of directors shall issue an order eliminating district divisions in conformity with section 61-05-13.

Approved March 21, 2001
Filed March 21, 2001

CHAPTER 566

SENATE BILL NO. 2287

(Senators Fischer, Urlacher)
(Representatives Aarsvold, Nelson, Weisz)

WATERCOURSE MAINTENANCE AND BRIDGE DEBRISMENT

AN ACT to create and enact a new section to chapter 61-16.1 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. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Watercourses, bridges, and low water crossings. 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:

1. 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. 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.

Approved April 23, 2001
Filed April 23, 2001

CHAPTER 567

HOUSE BILL NO. 1060

(Representatives Koppang, Mahoney, Wikenheiser)
(Senators Fischer, Freborg)

DRAIN FUND CUSTODY

AN ACT to amend and reenact sections 61-21-19, 61-21-28, 61-21-29, and 61-21-50 of the North Dakota Century Code, relating to custody of drain funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-21-19 of the North Dakota Century Code is amended and reenacted as follows:

61-21-19. Right of way - How acquired - Assessment of damages - Issuance of warrants. The right of way for the construction, operation, and maintenance of ~~any~~ a proposed drain, if not conveyed to the county by the owner, may be acquired by eminent domain in ~~such~~ the manner as may be prescribed by law. ~~Where~~ If lands assessed for drainage benefits are not contiguous to ~~such~~ the drain, access right of way thereto over the land of others may be acquired in the same manner. ~~Such~~ The right of way, when acquired, ~~shall be~~ is the property of the county. The board may issue warrants in a sum sufficient to pay the damages assessed for ~~such~~ the right of way. ~~Such~~ The warrants ~~shall~~ must be drawn upon the proper county treasurer or, if the water resource district treasurer is custodian of the drain funds, water resource district treasurer, and ~~shall be~~ are payable out of ~~any~~ drain funds in the hands of the treasurer ~~which~~ that have been collected for the construction of the drain for which ~~such~~ the right of way is sought to be obtained. The board shall negotiate the warrants at not less than the par value thereof and shall pay into court for the benefit of the owners of the right of way the amount to which each is entitled according to the assessment of damages, paying the surplus, if any, to the county treasurer or water resource district treasurer, who shall place the same to the credit of the proper drain fund.

SECTION 2. AMENDMENT. Section 61-21-28 of the North Dakota Century Code is amended and reenacted as follows:

61-21-28. Collection of drain taxes. The county treasurer shall collect the drain taxes ~~shall be collected by the county treasurer,~~ and shall credit all moneys so collected ~~shall be credited~~ to the drain fund to which they belong. The county treasurer shall act as the custodian of ~~such~~ the drain funds unless the board of the water resource district having jurisdiction over the drain requests otherwise in writing. Upon receiving a written request from the water resource district board, the county treasurer shall pay all moneys collected, and the earnings thereon, to the treasurer of the water resource district, who shall then act as the custodian of the drain funds. A direction by a board is effective for all moneys then in the custody of the county treasurer and all moneys subsequently collected thereafter unless and until the board directs in writing that the county treasurer act as the custodian of the moneys.

SECTION 3. AMENDMENT. Section 61-21-29 of the North Dakota Century Code is amended and reenacted as follows:

61-21-29. Payment of costs and expenses of locating, constructing, maintaining, and improving drain - Warrants issued. Payment of all expenses and costs of locating and constructing ~~any a drain shall~~ must be made upon order of the board and warrants therefor ~~shall~~ must be signed by the chairman and one other member of the board. All warrants drawn by the board in payment of items of expense of a drain ~~shall be~~ are payable from the proper drain fund and ~~shall~~ must be accepted by the treasurer in payment of taxes levied in regard to ~~such the~~ drain. All ~~such~~ warrants, after presentation to the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer for payment, if not paid for want of funds, ~~shall~~ must be registered by the county treasurer or water resource district treasurer and thereafter bear interest at a rate not to exceed eight percent per annum. The county commissioners, by proper resolution, are authorized to purchase drainage warrants from general county funds in instances ~~where such~~ when the warrants will be funded by a bond issue within six months from the date of purchase.

SECTION 4. AMENDMENT. Section 61-21-50 of the North Dakota Century Code is amended and reenacted as follows:

61-21-50. Drain warrants - Terms and amounts. Drain costs ~~shall~~ must be paid upon order of the board by warrants signed by the chairman and one other member of the board. The warrants ~~shall be~~ are payable from the proper drain fund and, upon maturity, ~~shall be~~ are receivable by the treasurer for drain assessments supporting ~~such the~~ fund. The warrants may be issued at any time after the order establishing the drain has become final and after incurring liability to pay for ~~any~~ drain work to be financed by drain assessments and in anticipation of levy and collection of ~~such the~~ assessments. Every warrant not made payable on demand ~~shall~~ must specify the date when it becomes payable. Demand warrants not paid for want of funds ~~shall~~ must be registered by the county treasurer or, if the water resource district treasurer is custodian of the drain funds, the water resource district treasurer and ~~shall thereafter~~ bear interest at a rate determined by the board, not exceeding eight percent per annum. Warrants of specified maturities ~~shall~~ bear interest according to their provisions at a rate or rates resulting in an average net interest cost not exceeding twelve percent per annum if sold at private sale, and may be issued with interest coupons attached. There is no interest rate ceiling on warrants sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities. All drain warrants ~~shall~~ must state upon their face the purpose for which they are issued and the drain fund from which they are payable. The warrants may be used to pay drain obligations, or may be sold at not less than ninety-eight percent of par value, provided that the proceeds of warrants sold ~~shall be~~ are placed in the proper drain fund and used exclusively for drain expenses. Any unpaid warrants issued for the acquisition of right of way or the construction of ~~any a~~ drain, including all incidental costs in connection therewith, ~~shall~~ must be funded by a bond issue within one hundred eighty days from and after the filing of the assessment of all ~~such~~ costs with the county auditor as provided in section 61-21-27, but ~~such this~~ requirement ~~shall~~ may not be construed as prohibiting the funding of warrants or the issuance of bonds after ~~such the~~ one hundred eighty-day period.

Approved March 6, 2001
Filed March 6, 2001

CHAPTER 568

HOUSE BILL NO. 1158

(Natural Resources Committee)

(At the request of the State Water Commission)

SOUTHWEST PIPELINE PROJECT BOND LIMITATION

AN ACT to amend and reenact section 61-24.3-01 of the North Dakota Century Code, relating to the amount of bonds that may be issued to finance the southwest pipeline project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

61-24.3-01. Legislative findings and intent. The legislative assembly finds that adequate water supplies for municipal, domestic, livestock, rural, irrigation, industrial, and other uses are essential for the social stability and economic security of the people of the state of North Dakota. It is further found that the development and utilization of the water resources of this state are necessary for the protection of health, property, and enterprise, and for the promotion of prosperity and general welfare of the people of the state of North Dakota, and that such development and utilization of water resources in this state involves, necessitates, and requires the exercise of the sovereign powers of the state and concern a public purpose. Therefore, it is hereby declared necessary that the southwest pipeline project, as authorized and approved pursuant to this chapter, be established and constructed, to provide for the supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River with water supplies from the Missouri River for multiple purposes, including domestic, rural, and municipal uses. In furtherance of this public purpose, the state water commission may provide for the issuance of bonds not to exceed ~~fifteen~~ twenty-five million dollars in accordance with chapter 61-02 to finance the cost of the project. The provisions of this chapter may not be construed to, in any manner, abrogate or limit the rights, powers, duties, or functions of the state water commission or the state engineer, but are supplementary thereto. Nor may this chapter be construed as limiting or in any way affecting the laws of this state relating to the organization or operation of irrigation districts, water resource districts, or other political subdivisions.

Approved March 16, 2001

Filed March 16, 2001

CHAPTER 569

SENATE BILL NO. 2223 (Senators Urlacher, Krauter, Wardner) (Representative Haas)

SOUTHWEST WATER AUTHORITY DIRECTORS AND WATER DISTRICT EXPENSES

AN ACT to amend and reenact sections 61-24.5-04, 61-24.5-08, and subsection 7 of section 61-35-12 of the North Dakota Century Code, relating to the board of directors of the southwest water authority and the reimbursement of water district employee expenses; and to repeal section 61-24.5-05 of the North Dakota Century Code, relating to the initial 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 1999 Supplement to 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. ~~At the first election after the initial board of directors has been appointed, two directors~~ One director must be elected from each county within the authority, and ~~three~~ two directors must be elected in the city of Dickinson. ~~The two directors~~ director from Stark County may not be ~~residents~~ 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 compensation in the amount not to exceed sixty-two dollars and fifty cents per day and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

SECTION 2. AMENDMENT. Section 61-24.5-08 of the North Dakota Century Code is amended and reenacted as follows:

61-24.5-08. Term of office of directors - Oath of office - Bonds. Members of the board of directors of the authority ~~shall~~ hold office for a term of four years, until a successor has been duly elected and qualified; ~~but one-half of the first county directors elected shall hold office for a term of two years, and one-half shall hold office for a term of four years. Two of the three first city directors shall hold office for a term of four years, and the third shall hold office for a term of two years. Terms of office of directors elected at the first election must be determined by lot. Each county shall have one two-year director and one four-year director, and the city of Dickinson shall have one two-year and two four-year directors on the first elected board of directors. Directors elected thereafter shall hold office for a term of four years. If the office of any director becomes vacant by reason of the failure of any director elected at any election to qualify or for any other reason, the director's successor must be appointed to fill the vacancy by the board of county commissioners of the county in which the vacancy occurs, or by the governing body of the city of Dickinson. A director appointed to fill a vacancy shall hold office for the unexpired term of the~~

director whose office has become vacant, and until a successor has been elected and qualified.

Members of the board of directors elected from a county must be elected at the primary election; ~~beginning in 1992~~, and shall assume office on the first Monday in July following their election. Members of the board of directors elected from the city of Dickinson must be elected at the municipal election; ~~beginning in 1992~~, and shall assume office on the first Monday in July following their election.

In 2002 all directors' terms are deemed to have expired, and each county shall elect one director to serve on the board of directors and the city of Dickinson shall elect two directors to serve on the board of directors. In 2002 one director from the city of Dickinson and directors from Adams, Billings, Dunn, Grant, Oliver, and Slope counties must be elected for two-year terms and in 2004 and thereafter must be elected for four-year terms. All other directors elected in 2002 must be elected for four-year terms.

Before assuming the duties of the office of director, each director shall take and subscribe to the oath of office prescribed by law for civil officers. The authority treasurer must be bonded in an amount as the board may prescribe.

SECTION 3. AMENDMENT. Subsection 7 of section 61-35-12 of the North Dakota Century Code is amended and reenacted as follows:

7. 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 district and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for it in its proceedings.

SECTION 4. REPEAL. Section 61-24.5-05 of the North Dakota Century Code is repealed.

Approved April 12, 2001
Filed April 12, 2001

CHAPTER 570**SENATE BILL NO. 2222**
(Senators Urlacher, Krauter, Wardner)
(Representative Haas)**SOUTHWEST WATER AUTHORITY MILL LEVY**

AN ACT to amend and reenact section 61-24.5-10 of the North Dakota Century Code, relating to the mill levy for the southwest water authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.5-10 of the North Dakota Century Code is amended and reenacted as follows:

61-24.5-10. District budget - Tax levy. For each taxable year through ~~2006~~ 2010, the authority may levy a tax of not to exceed one mill annually on each dollar of taxable valuation within the boundaries of the authority for the payment of administrative expenses of the authority, including per diem, mileage, and other expenses of directors, expenses of operating the office, engineering, surveying, investigations, legal, administrative, clerical, and other related expenses of the authority. All moneys collected pursuant to the levy must be deposited to the credit of the authority and may be disbursed only as herein provided. The board may invest any funds on hand, not needed for immediate disbursement or which are held in reserve for future payments, in bonds of the United States, certificates of deposit guaranteed or insured by the United States or an instrumentality or agency thereof, and bonds or certificates of indebtedness of the state of North Dakota, or any of its political subdivisions. During the period of time in which the authority may levy one mill annually as provided herein, any joint water resource board created pursuant to section 61-16.1-11, by or among one or more of the water resource districts in the counties which are included in the authority, must be limited to one mill under the authority of section 61-16.1-11.

Approved April 19, 2001

Filed April 19, 2001

WEAPONS

CHAPTER 571

SENATE BILL NO. 2257

(Senators Lyson, Cook, Watne)
(Representative Porter)

FIREARM POSSESSION AT PUBLIC GATHERING

AN ACT to amend and reenact section 62.1-02-05 of the North Dakota Century Code, relating to possession of a firearm at a public gathering.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 62.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

62.1-02-05. Possession of a firearm at a public gathering - Penalty - Application.

1. A person who possesses a firearm at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings.
2. This section does not apply to law enforcement officers; members of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty; competitors participating in organized sport shooting events; gun and antique shows; participants using blank cartridge firearms at sporting or theatrical events; any firearms carried in a temporary residence or motor vehicle; students and instructors at hunter safety classes; or private security personnel while on duty. In addition, a municipal court judge licensed to practice law in this state, a district court judge, and a retired North Dakota law enforcement officer are exempt from the prohibition and penalty in subsection 1 if the individual is otherwise licensed to carry a firearm under section 62.1-04-03 and maintains the same level of firearms proficiency as is required by the peace officers standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient.

3. This section does not prevent any political subdivision from enacting an ordinance which is less restrictive than this section relating to the possession of firearms at a public gathering. Such an ordinance supersedes this section within the jurisdiction of the political subdivision.

Approved April 9, 2001

Filed April 10, 2001

CHAPTER 572

HOUSE BILL NO. 1160

(Appropriations Committee)
(At the request of the Attorney General)

CONCEALED WEAPONS LICENSE FEE DISPOSITION

AN ACT to amend and reenact subsection 3 of section 62.1-04-03 of the North Dakota Century Code, relating to disposition of fees for concealed weapons licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 62.1-04-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The license fee for a concealed weapons license is twenty-five dollars. Ten dollars of this fee must be credited to the state general fund and fifteen dollars of this fee must be credited to the attorney general's operating fund up to a total of ~~fifty~~ seventy-five thousand dollars each biennium. Any collections from ~~fifteen~~ fifty dollars of this fee in excess of the ~~fifty~~ seventy-five thousand dollars credited to the attorney general's operating fund each biennium must be credited to the state general fund. The license fee must be paid before the license is issued by the director of the bureau of criminal investigation.

Approved April 13, 2001
Filed April 16, 2001

WEIGHTS, MEASURES, AND GRADES

CHAPTER 573

HOUSE BILL NO. 1091

(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 or calibrating weighing and measuring devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 64-02-10 of the 1999 Supplement to 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 | \$97.00 <u>107.00</u> |
| 2. | Test livestock and vehicle scale | 97.00 <u>107.00</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 | 55.00 <u>60.00</u> |
| 4. | Test auxiliary beam on livestock, motor truck, and motor truck dump scale | 49.00 <u>21.00</u> |
| 5. | Test overhead monorail, track, hopper, dormant, deck, and hanging scale | 43.00 <u>48.00</u> |
| 6. | Test movable platform scale | 8.00 <u>10.00</u> |
| 7. | Test counter or computing scale | 8.00 <u>10.00</u> |
| 8. | Test hanging scale of fifty pound [22.68 kilograms] capacity or less | 8.00 <u>10.00</u> |
| 9. | Test board of cloth measure | 8.00 |
| 10. | Test a retail motor fuel device | 8.00 <u>10.00</u> |

44.	<u>10.</u>	Test or calibrate weighing and measuring standards, per metrologist, per quarter hour or fraction thereof	42.50 <u>15.00</u>
42.	<u>11.</u>	Test mobile delivery gasoline and fuel oil meter	49.00 <u>21.00</u>
43.	<u>12.</u>	Test gasoline, LPG, or fuel oil meter on common carrier pipelines, or any other meter used in loading railway cars, transports, or other conveyances	43.00 <u>48.00</u>
44.	<u>13.</u>	Test propane, ag chemical, or liquid fertilizer meter	31.00 <u>35.00</u>
45.	<u>14.</u>	Test truck tank	64.00 <u>67.00</u>
46.	<u>15.</u>	Test crane scale	64.00 <u>67.00</u>
47.	<u>16.</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	9.00 <u>10.00</u>
48.	<u>17.</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 ~~nine~~ ten dollars a quarter hour for the time between the arranged time and the time at which the test can begin.

Approved March 19, 2001
 Filed March 19, 2001

WORKERS' COMPENSATION

CHAPTER 574

HOUSE BILL NO. 1152

(Representative Porter)

(Senator Klein)

(At the request of the Workers Compensation Bureau)

COMPENSABLE INJURY DEFINITION

AN ACT to amend and reenact subsection 11 of section 65-01-02 of the North Dakota Century Code, relating to the definition of compensable injury for workers' compensation purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁸ **SECTION 1. AMENDMENT.** Subsection 11 of section 65-01-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. "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.

²⁸⁸ Section 65-01-02 was also amended by section 1 of House Bill No. 1153, chapter 575.

- (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.

SECTION 2. EFFECTIVE DATE. This Act is effective for all claims filed after July 31, 2001, regardless of the date of injury.

Approved March 14, 2001
Filed March 14, 2001

CHAPTER 575

HOUSE BILL NO. 1153

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

SICK AND ANNUAL LEAVE USE AND PREFERRED WORKER PROGRAM

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to establishing incentives for employers to hire workers who have previously sustained a work injury; to amend and reenact subsection 19 of section 65-01-02 and sections 65-05-08 and 65-05-32 of the North Dakota Century Code, relating to the definition of fee schedule for workers' compensation purposes, prohibiting employers from requiring injured workers to use sick or annual leave benefits, the confidentiality and use of workers' compensation claim file information; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸⁹ **SECTION 1. AMENDMENT.** Subsection 19 of section 65-01-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

19. "Fee schedule" means the ~~relative value scale, conversion factors, fee schedules, and medical aid rules adopted by payment formulas~~ established in the bureau publication entitled "Medical and Hospital Fees".

SECTION 2. AMENDMENT. Section 65-05-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-08. Disability benefits - Not paid unless period of disability is of five days' duration or more - Application required - Suspended during confinement - Duty to report wages. No benefits may be paid for disability, the duration of which is less than five consecutive calendar days. An employer may not require an employee to use sick leave or annual leave, or other employer-paid time off work, before applying for benefits under this section, in lieu of receiving benefits under this section, or in conjunction with benefits provided under this section, but may allow an employee to use sick leave or annual leave to make up the difference between the employee's wage-loss benefits and the employee's regular pay. If the period of disability is five consecutive calendar days' duration or longer, benefits must be paid for the period of disability provided that:

1. When disability benefits are discontinued, the bureau may not begin payment again unless the injured employee files a reapplication for disability benefits on a form supplied by the bureau. In case of

²⁸⁹ Section 65-01-02 was also amended by section 1 of House Bill No. 1152, chapter 574.

reapplication, the award may commence no more than thirty days before the date of reapplication. Disability benefits must be reinstated upon proof by the injured employee that:

- a. The employee has sustained a significant change in the compensable medical condition;
 - b. The employee has sustained an actual wage loss caused by the significant change in the compensable medical condition; and
 - c. The employee has not retired or voluntarily withdrawn from the job market as defined in section 65-05-09.3.
2. All payments of disability and rehabilitation benefits must be suspended during the period of confinement in excess of seventy-two consecutive hours of any employee who is eligible for, or receiving, benefits under this title who is confined in a penitentiary, jail, youth correctional facility, or any other penal institution. After discharge from the institution, the bureau shall pay subsequent disability or rehabilitation benefits as the employee otherwise would be entitled under this title.
 3. Any employee who is eligible for, or receiving disability or rehabilitation benefits under this title shall report any wages earned, from part-time or full-time work from any source. If an employee fails to report wages earned, the employee shall refund to the bureau any disability or vocational rehabilitation benefits overpaid by the bureau for that time period. To facilitate recovery of those benefits, the bureau may offset future benefits payable, under section 65-05-29. If the employee willfully fails to report wages earned, the employee is subject to the penalties in section 65-05-33. An employee shall report whether the employee has performed work or received wages. The bureau periodically shall provide a form to all injured employees receiving disability or rehabilitation benefits which the injured employee must complete to retain eligibility for further disability or rehabilitation benefits, regardless of the date of injury or claim filing. The form will advise the injured employee of the possible penalties for failure to report any work or activities as required by this section. An injured employee who is receiving disability or vocational rehabilitation benefits must report any work activities to the bureau whether or not the injured employee receives any wages. An injured employee who is receiving disability or vocational rehabilitation benefits also must report any other activity if the injured employee receives any money, including prize winnings, from undertaking that activity, regardless of expenses or whether there is a net profit. For purposes of this subsection, "work" does not include routine daily activities of self-care or family care, or routine maintenance of the home and yard, and "activities" does not include recreational gaming or passive investment endeavors.
 4. An employee shall request disability benefits on a claim form furnished by the bureau. Disability benefits may not commence more than one year prior to the date of filing of the initial claim for disability benefits.
 5. The provisions of this section apply to any disability claim asserted against the fund on or after July 1, 1991, irrespective of injury date.

6. It is the burden of the employee to show that the inability to obtain employment or to earn as much as the employee earned at the time of injury is due to physical limitation related to the injury, and that any wage loss claimed is the result of the compensable injury.
7. If the employee voluntarily limits income or refuses to accept employment suitable to the employee's capacity, offered to or procured for the employee, the employee is not entitled to any disability or vocational rehabilitation benefits during the limitation of income or refusal to accept employment unless the bureau determines the limitation or refusal is justified.
8. The bureau may not pay disability benefits unless the loss of earning capacity exceeds ten percent. The injured employee may earn up to ten percent of the employee's preinjury average gross weekly earnings with no reduction in total disability benefits. The employee must report any earnings to the bureau for a determination of whether the employee is within the limit set in this subsection.
9. Upon securing suitable employment, the injured employee shall notify the bureau of the name and address of the employer, the date the employment began, and the amount of wages being received. If the injured employee is receiving disability benefits, the injured employee shall notify the bureau whenever there is a change in work status or wages received.
10. The bureau shall pay to an employee receiving disability benefits a dependency allowance for each child of the employee at the rate of ten dollars per week per child. Effective July 1, 1989, this rate must be paid to each eligible employee regardless of the date of injury.
11. Dependency allowance for the children may be made directly to either parent or guardian at the discretion of the bureau.

SECTION 3. AMENDMENT. Section 65-05-32 of the North Dakota Century Code is amended and reenacted as follows:

65-05-32. Privacy of records and hearings - Penalty. Information contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to bureau employees or agents in the performance of their official duties. Providing further that:

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant. However, reserve information may not be made available to the claimant or the claimant's representatives. Availability of this information to employers is subject to the sole discretion of the bureau.
2. Employers or their duly authorized representatives who are required to have access to an injured worker's claim file for the performance of their duties may review and have access to any files of their own injured workers. An employer or an employer's duly authorized representative who willfully communicates information contained in an employee's claim file to any person who does not need the information in the performance of that person's duties is guilty of a class B misdemeanor.

3. Physicians or health care providers treating or examining workers claiming benefits under this title, or physicians giving medical advice to the bureau regarding any claim may, at the discretion of the bureau, inspect the claim files and records of injured workers.
4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the bureau at any stage of the proceedings on any matter pertaining to the administration of this title.
5. The claimant's name; ~~social security number~~; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public. This information may not be released in aggregate form, except to those persons contracting with the bureau for exchange of information pertaining to the administration of this title or except upon written authorization by the claimant for a specified purpose.
6. At the request of a claimant, the bureau may close the medical portion of a hearing to the public.

SECTION 4. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

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 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 may not appeal a bureau decision not to provide assistance to that employer under this section. Money in the workers' compensation fund is appropriated on a continuing basis to provide the assistance authorized under this section.

SECTION 5. EFFECTIVE DATE. Sections 2 and 3 of this Act are effective July 1, 2001, for all claims regardless of the date of injury.

Approved March 26, 2001
Filed March 26, 2001

CHAPTER 576

SENATE BILL NO. 2121

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION FRAUD

AN ACT to amend and reenact sections 65-01-05 and 65-05-33 of the North Dakota Century Code, relating to workers' compensation fraud; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹⁰ **SECTION 1. AMENDMENT.** Section 65-01-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-01-05. Employment of those unprotected by insurance unlawful - Effect of failure to secure compensation - Penalty - Injunction. It is unlawful for ~~any~~ an employer to employ anyone, or to receive the fruits of the labor of ~~any~~ a person, in a hazardous employment as defined in this title, without first ~~making application~~ applying for workers' compensation insurance coverage for the protection of ~~such~~ the employees by notice to the bureau of the intended employment, the nature thereof, and the estimated payroll expenditure for the coming twelve-month period. ~~Failure~~ Willful failure to secure workers' compensation coverage for employees by application for workers' compensation insurance constitutes a class A misdemeanor. If the premium due exceeds five hundred dollars, the penalty for willful failure to secure coverage is a class C felony. ~~Where~~ If the employer is a corporation or a limited liability company, the president, secretary, treasurer, or person with primary responsibility is liable for the failure to secure workers' compensation coverage under this section. In addition to the penalties prescribed by this section the bureau may, by injunction proceedings as provided for in this title, enjoin ~~any~~ an employer from unlawfully employing uninsured workers.

SECTION 2. AMENDMENT. Section 65-05-33 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-33. Filing false claim or false statement - Penalty.

1. A person is ~~guilty of a class A misdemeanor if that person is claiming who claims~~ benefits or payment for services under this title; ~~and that or the employer of a person who claims benefits or payments for services is guilty of a class A misdemeanor if the person or employer does any one or more of the following:~~
 - a. Willfully files a false claim or makes a false statement in an attempt to secure payment of benefits or payment for services.

²⁹⁰ Section 65-01-05 was repealed by section 17 of Senate Bill No. 2157, chapter 578.

- b. Willfully misrepresents that person's physical condition, including deceptive conduct which misrepresents that person's physical ability.
- c. Has a claim for disability benefits that has been accepted by the bureau and willfully fails to notify the bureau of:
 - (1) Work or other activities as required under subsection 3 of section 65-05-08;
 - (2) The receipt of income from work; or
 - (3) An increase in income from work.
2. If any of the acts in subsection 1 are committed to obtain, or pursuant to a scheme to obtain, more than five hundred dollars in benefits or payment for services, the offense is a class C felony.
3. In addition to any other penalties provided by law, the person claiming benefits or payment for services in violation of this section shall reimburse the bureau for any benefits paid based upon the false claim or false statement and, if applicable, under section 65-05-29 and shall forfeit any additional benefits relative to that injury.
4. For purposes of this section, "statement" includes any testimony, claim form, notice, proof of injury, proof of return to work status, bill for services, diagnosis, prescription, hospital or doctor records, x-ray, test results, or other evidence of loss, injury, or expense.

SECTION 3. EFFECTIVE DATE. This Act is effective August 1, 2001, for all claims, regardless of the date of injury.

Approved April 12, 2001
Filed April 12, 2001

CHAPTER 577**HOUSE BILL NO. 1469**
(Representative Gulleson)
(Senator Kelsh)**CUSTOM AGRICULTURAL OPERATION
EMPLOYMENT EXEMPTION**

AN ACT to provide that certain custom agricultural operation employment is exempt from workers' compensation coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Agricultural employment exemption - Custom agricultural operations. For purposes of the agricultural service exception to hazardous employment under subsection 22 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.

Approved March 19, 2001
Filed March 19, 2001

CHAPTER 578

SENATE BILL NO. 2157

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION PREMIUMS AND REPORTING

AN ACT to create and enact two new sections to chapter 65-04 of the North Dakota Century Code, relating to workers' compensation dispute resolution and penalties for employer's failure to secure coverage, submit payroll, or otherwise comply with chapter 65-04; to amend and reenact sections 65-02-23, 65-02-24, 65-04-04, 65-04-19, 65-04-20, 65-04-22, 65-04-24, 65-04-25, 65-04-26.1, 65-04-27.1, 65-08-01, 65-09-01, 65-09-02, and 65-10-01 of the North Dakota Century Code, relating to workers' compensation premium billing statements, determining date of default for premium, service of process on directors of nonresident corporations, procedure for notifying corporate officers of their liability for unpaid premium, reporting wages for extraterritorial coverage, appeals, and internal cross-references; to repeal sections 65-01-05, 65-04-05, 65-04-12, 65-04-14, 65-04-23, 65-09-03, and 65-09-04 of the North Dakota Century Code, relating to penalties for an employer's failure to secure workers' compensation coverage, submit payroll, or otherwise comply with chapter 65-04; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-02-23. Workers' compensation fraud unit - Continuing appropriation. The bureau shall establish a workers' compensation fraud unit. The bureau may employ investigators and licensed attorneys, or contract with a private investigator whenever feasible or cost effective, to investigate and review any alleged case of fraud against the fund by employers, injured workers, or providers of medical or other services, including activities described under section ~~65-04-14~~ 12 of this Act or 65-05-33. The unit shall refer cases of fraud to the bureau for the imposition of administrative penalties and may refer them to the appropriate authorities for prosecution. Money in the workers' compensation fund is appropriated on a continuing basis for payment of costs associated with identifying, preventing, and investigating employer or provider fraud. The biennial independent performance evaluation of the bureau must evaluate and report on the effectiveness of these expenditures. The bureau may establish a process to charge investigative costs against the rate class of an employer being investigated and to credit any recoveries to that rate class.

SECTION 2. AMENDMENT. Section 65-02-24 of the North Dakota Century Code is amended and reenacted as follows:

65-02-24. Immunity from civil liability. A person who notifies the bureau or who assists the bureau on any matter pertaining to the administration of this title of an alleged violation of section ~~65-04-14~~ 12 of this Act or 65-05-33, or who provides

information in the course of an investigation of an alleged violation of section ~~65-04-14~~ 12 of this Act or 65-05-33, is not subject to civil liability for that action if the action was in good faith and without malice. At the request of the person who notifies or assists the bureau or who provides information to the bureau, the bureau may not reveal the identity of that person or disclose any information that may reveal the identity of that person to any person other than a representative of or a person rendering assistance to the bureau.

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 receipts 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. ~~Immediately after payment is made, the~~ The bureau shall mail to the employer a ~~receipt or~~ certificate specifying that the payment has been made. The ~~receipt or~~ certificate, attested by the seal of the bureau, is prima facie evidence of the payment of the premium. 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 ~~fifteen~~ 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.

SECTION 4. AMENDMENT. Section 65-04-19 of the North Dakota Century Code is amended and reenacted as follows:

65-04-19. Bureau to determine premium due from employer - Mailing of ~~pay-in-order~~ premium billing statement as notice of amount due. The bureau shall determine the amount of premium due from every employer subject to this title for the twelve months next succeeding the date of expiration of a previous period of insurance or next succeeding the date at which the bureau received information that an employer is subject to the title. The bureau shall order the premium to be paid into the fund and shall mail a copy of the ~~pay-in-order~~ premium billing statement to the employer. Mailing of the ~~pay-in-order~~ premium billing statement constitutes notice to the employer of the amount due.

SECTION 5. AMENDMENT. Section 65-04-20 of the North Dakota Century Code is amended and reenacted as follows:

65-04-20. Installment payment of premiums - Interest required.

4. If the amount of premium billed to an employer on a pay-in-order premium billing statement is greater than one hundred dollars the minimum premium, the employer may pay the excess of the minimum premium in installments as follows:
 - a. If the employer is the state of North Dakota, or any department, industrial association, or political subdivision of the state, the employer may pay the premium in two equal semiannual installments at the option of the employer and no bond or undertaking is required to secure the payment of deferred premiums.
 - b. If the employer is other than one mentioned in subdivision a, the employer may pay the premium either in two equal semiannual installments or in four equal quarterly installments.
2. Interest must be charged at the prevailing base rate posted by the Bank of North Dakota plus two and one-half percent. The interest charged must be at least six percent per annum. Interest must be charged on all premiums deferred under this section. Upon default in payment of any installment, the penalties provided in this chapter apply.

SECTION 6. AMENDMENT. Section 65-04-22 of the North Dakota Century Code is amended and reenacted as follows:

65-04-22. Bureau may make premium due immediately - When premium not covered by special order is in default. The bureau, by its proper order, and by an endorsement and notification to that effect upon the pay-in-order premium billing statement sent to an employer, may require payment of a premium within any time less than one month which, in the judgment of the bureau, is reasonable and necessary to secure the payment of the premium by any employer whose employment within this state is likely to continue for less than one month, and in such case, default shall begin at the end of the time allowed by the bureau for the payment of the premium. In the absence of such order, endorsement, and notification, the premium, whether the same is to be paid in full or in installments, shall be in default as follows:

1. The entire premium, or if the employer exercises the employer's option to pay the premium in installments, the first installment, shall be in default one month from the payment due date of specified in the pay-in-order premium billing statement.
2. If the employer has elected to pay the employer's premium in semiannual installments, the final payment shall be in default six months from the date of the pay-in-order.
3. If the employer has elected to pay the employer's premium in quarterly installments, the second installment shall be in default three months from the date of the pay-in-order, and the third and fourth installments shall be in default six months and nine months respectively from the date of the pay-in-order.

If the employer has elected to pay the employer's premium in installments, default Default of any installment payment will, at the option of the bureau, make the entire remaining balance of the premium due and payable. The bureau may declare an employer to be uninsured at any time after forty-five days has passed from the due date specified in the premium billing statement and the employer has failed to make a payment to the bureau.

SECTION 7. AMENDMENT. Section 65-04-24 of the North Dakota Century Code is amended and reenacted as follows:

65-04-24. Bureau to bring suit for premiums in default. ~~Within twenty days after~~ When an employer defaults on payment of premium, penalties, or interest, the bureau ~~shall certify the account in default to the attorney general~~ may bring suit for the collection of the premium, accrued penalties and interest, and any additional penalties and interest that may accrue. ~~After an account has been certified to the attorney general the~~ The bureau may adjust or compromise the account upon recommendation of the attorney general. The bureau; ~~upon the recommendation and approval of the attorney general,~~ may retain counsel on a contingent fee basis to represent the bureau in any proceeding relating to the collection of amounts due under this title. The bureau shall charge attorney fees and costs to the workers' compensation general fund of the workers compensation bureau. In any action for the collection of amounts due the bureau under this title, the court may not review or consider the action of the bureau regarding the acceptance or payment of any claim.

SECTION 8. AMENDMENT. Section 65-04-25 of the North Dakota Century Code is amended and reenacted as follows:

65-04-25. Service of nonresident employer in suit for premium or in suit against an uninsured employer. If the employer in an action to collect delinquent premiums or for injuries sustained in the employer's employment for which the employer did not carry the required insurance is a nonresident of this state, or a foreign corporation or limited liability company doing business in this state, service of the summons may be made upon any agent, representative, or foreman of said employer in this state, or in the case of a foreign corporation, its director, and where there is no agent, representative, or foreman, or in the case of a foreign corporation, director, upon whom service can be made in this state, service upon the secretary of state ~~shall constitute~~ constitutes personal service upon ~~such that~~ nonresident employer or corporation's director who has either failed to secure the necessary coverage or who is delinquent in the employer's premiums, or service may be made in any other manner designated by law. ~~In the event it is not possible or practical to proceed in this state, the~~ The bureau may; upon the recommendation and approval of the attorney general, retain counsel who is licensed in another state to represent the bureau on a contingent fee basis in any proceeding relating to the collection of amounts due the bureau under this title. All attorney fees and costs ~~shall be~~ incurred under this section are a charge to the general fund.

SECTION 9. AMENDMENT. Section 65-04-26.1 of the North Dakota Century Code is amended and reenacted as follows:

65-04-26.1. Corporate officer personal liability.

1. An officer or director of a corporation, or manager or governor of a limited liability company, 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.

2. The personal liability of any person as provided in this section survives dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the corporation or limited liability company must be considered earned from any person determined to be personally liable.
3. After review of the evidence in the employer's file, the bureau shall determine personal liability under this section. The bureau shall provide, by registered mail, notice of liability to a person determined to be personally liable under this section. A person determined to be liable may request reconsideration or rehearing by the bureau of that determination. The bureau's determination of personal liability is final and is not reviewable in any court unless the person requests reconsideration or rehearing of the determination. The request must be in writing and must be served on the bureau within thirty days from the date of mailing of the notice. Thereafter, a hearing must be held pursuant to ~~chapter 28-32~~ issue a decision under this section pursuant to section 10 of this Act.

SECTION 10. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Decisions by bureau - Disputed decisions. Notwithstanding any provisions to the contrary in chapter 28-32, the following procedures apply when the bureau issues a decision under chapter 65-04 or section 65-05-07.2:

1. The bureau may issue a 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 is final and may not be reheard or appealed.
3. Within sixty days after receiving a petition for reconsideration, unless settlement negotiations are ongoing, the bureau shall serve on the parties by certified mail an administrative order including its findings of fact, conclusions of law, and order, in response to the petition for reconsideration.
4. A party has thirty days from the date of service of an administrative order to file a written request for rehearing. The request must state specifically each alleged error of fact and law to be reheard and the

relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.

5. Rehearings must be conducted as hearings under chapter 28-32 to the extent that chapter does not conflict with this section. The bureau may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings of fact, conclusions of law, and orders. In reviewing recommended findings, conclusions, and orders, the bureau may consult with its legal counsel representing it in the proceeding.
6. Within sixty days after receiving the administrative law judge's recommended findings of fact, conclusions of law, and order, the bureau shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.
7. An employer may appeal a posthearing administrative order to district court in accordance with chapter 65-10.

SECTION 11. AMENDMENT. Section 65-04-27.1 of the North Dakota Century Code is amended and reenacted as follows:

65-04-27.1. Injunctive relief - Procedure.

1. a. To protect the lives, safety, and well-being of wage workers, to ensure fair and equitable contributions to the workers' compensation fund among all employers, and to protect the workers' compensation fund, the bureau may institute injunction proceedings in the name of the state of North Dakota against certain employers to prohibit them from employing others in those employments defined as hazardous by this title:
 - (1) When it has been brought to the attention of the bureau that the employer has unlawfully employed uninsured workers in violation of section ~~65-04-05~~ 12 of this Act;
 - (2) When the employer defaults in the payment of insurance premiums, reimbursements, penalties, or interest into the fund; or
 - (3) When the bureau, in exercise of the authority granted it by section 65-03-01, finds that it is necessary to enjoin and restrain certain employers and employments to protect the lives and safety of the employees because of the employer's failure or refusal to comply with necessary and proper safety rules.
- b. The courts of this state have jurisdiction to grant preventive relief under the circumstances described in subdivision a.
2. Chapter 32-06 as it relates to injunction applies to proceedings instituted under this section to the extent that chapter is applicable.
3. In addition to chapter 32-06, when the court has granted an immediate temporary injunction at the time of the commencement of the action the

defendant employer may have a hearing by the court on the merits of the case without delay. Upon three days' written notice to the bureau the court shall proceed to hearing on the merits and render its decision.

4. In addition to chapter 32-06, when the court has not granted an immediate temporary injunction at the time of the commencement of the action and the time for answer has expired, either party may have a hearing by the court on the merits of the case. Upon ten days' notice by either party to the other, the court shall proceed to hearing on the merits and render its decision.
5. Any court of competent jurisdiction in this state shall impose a fine of at least one thousand dollars against an employer who has violated an injunction granted under this section. The court shall impose a fine for each violation, in addition to any other penalty provided by law.

SECTION 12. A new section to chapter 65-04 of the North Dakota Century Code is created and enacted as follows:

Failure to secure coverage - Noncompliance - Failure to submit necessary reports - Penalty.

1. An employer may not employ any person, or receive the fruits of the labor of any person, in a hazardous employment as defined in this title, without first applying for workers' compensation insurance coverage for the protection of employees by notifying the bureau of the intended employment, the nature of the intended employment, and the estimated payroll expenditure for the coming twelve-month period.
2. An employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based, or who willfully fails to secure coverage for employees, is liable to the state in the amount of two thousand dollars plus three times the difference between the premium paid and the amount of premium the employer should have paid. The bureau shall collect a penalty imposed under this subsection in a civil action in the name of the state, and the bureau shall deposit a penalty collected under this subsection to the credit of the workers' compensation fund. An employer who willfully misrepresents to the bureau or its representative the amount of payroll upon which a premium under this title is based, or who willfully fails to secure coverage for employees, is guilty of a class A misdemeanor. If the premium due exceeds five hundred dollars, the penalty for willful failure to secure coverage or willful misrepresentation to the bureau or its representative is a class C felony. If the employer is a corporation or a limited liability company, the president, secretary, treasurer, or person with primary responsibility is liable for the failure to secure workers' compensation coverage under this subsection. In addition to the penalties prescribed by this subsection, the bureau may initiate injunction proceedings as provided for in this title to enjoin an employer from unlawfully employing uninsured workers. The cost of an investigation under this subsection which results in a criminal conviction may be charged to the employer's account and collected by civil action.
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. 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 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.

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 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.
5. When an employer defaults in the payment of any premium, any installment of the premium, any penalty or interest, or in the filing of any bond required under this chapter, the employer at the time of default is subject to a penalty not to exceed two hundred fifty dollars plus two percent of the amount of premiums, penalties, and interest in default, and beginning one month after default, a penalty of two percent of the amount of premiums, penalties, and interest in default for each month or fraction of a month the premium, penalty, or interest remains unpaid.

SECTION 13. AMENDMENT. Section 65-08-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-08-01. Extraterritorial coverage - When and how furnished.

1. An employee who suffers an injury while working outside this state, on account of which the employee or the employee's dependents would have been entitled to workers' compensation benefits provided by this title had such injury occurred within this state, is entitled to benefits, or

that employee's dependents in the event of the employee's death are entitled to benefits if at the time of injury:

- a. The employment is principally localized in this state, as determined by the following:
 - (1) The employer has a place of business in this state;
 - (2) The employee regularly works at or from that place of business;
 - (3) The employment contract is entered in this state; and
 - (4) In the case of an employee leasing company, the company retains control over the employee and does not lease the employee to an out-of-state employer;
 - b. The employee is working under a contract of hire, made in this state in employment not principally localized in any state, if:
 - (1) The employer has a place of business in this state;
 - (2) The employment contract is entered in this state; and
 - (3) In the case of over-the-road trucking, the employer retains control over the driver, dispatches employees from this state, and does not lease the driver to out-of-state employers; but trip leasing does not end coverage;
 - c. The employee is working under a contract of hire made in this state in employment principally localized in another state and that state's workers' compensation law is not applicable to the employer, as provided by a reciprocal agreement;
 - d. The employee is working under a contract of hire made in this state for employment outside the United States and the workers' compensation law of that other jurisdiction is not applicable to the employer; or
 - e. The employee is a resident of another state, and is hired by a North Dakota employer or that employer's authorized agent for temporary employment, the situs of which is located in another state, and the temporary employment is necessary to the principal employment of the North Dakota employer, provided that the other state recognizes the coverage under this title as the sole remedy of the employee against the employer for the injury or death.
2. The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or the employee's dependents otherwise entitled on account of the injury or death to workers' compensation benefits of this state bars a claim for benefits under this title.
 3. An employment relationship that is principally localized outside of this state is exempt from this title while the employee is temporarily within this state unless the workers' compensation law of the state in which the

employment is principally localized provides that the workers' compensation remedy in this state is the exclusive remedy for the employee or the dependents of an employee who died as the result of an injury in this state.

4. An employer whose employment results in significant contacts with this state shall acquire workers' compensation coverage in this state unless a reciprocal agreement between the states is entered which provides that the other state will likewise recognize that an employment relationship entered into in this state is exempted from the application of the workers' compensation law of the other state. An employment has significant contacts with this state when (a) the employee earns or would have been expected to earn twenty-five percent or more of the employee's gross annual wage or income from that employer from services rendered in this state; or (b) if no employee earns twenty-five percent of the employee's gross annual income from that employment within this state, the employer's gross annual payroll in a calendar year in this state is at least one hundred thousand dollars. Under this subsection, an employee injured in this state may elect to file a claim in this state notwithstanding that the employee had another remedy in the state in which the employment was principally localized. A claim filed under this subsection is subject to section 65-05-05. The time limits within which the bureau shall issue a decision on a claim, as specified in sections 65-01-16 and 65-02-08, do not begin to run for claims filed under this section until the first date the bureau may begin to process the claim as set forth in section 65-05-05.
5. An employer who opens an employer account with the bureau under this section is obligated to report all wages paid in this state, regardless of whether the significant contacts factors set forth in subsection 4 have been met.

SECTION 14. AMENDMENT. Section 65-09-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-09-01. Liability of uninsured employer for injury to employees.

1. Any employer subject to this title who is in violation of subsection 1 or 2 of section ~~65-04-14~~ 12 of this Act or declared uninsured pursuant to section 65-04-22 is not protected by the immunity from civil liability granted to employers under this title for injuries to that employer's employees for damages suffered by reason of injuries sustained in the course of employment and to the dependents and legal representatives of an employee whose death results from injuries sustained in the course of employment. The employer is liable for the premiums, reimbursements, penalties, and interest provided for in this title.
2. The bureau shall establish a procedure by which a person may apply to the bureau for a determination of whether that person is an employer required to obtain workers' compensation coverage under this title. A determination under this section that a person is not required to be insured is effective for no more than one year from the date the person is notified of the determination. The bureau retains continuing jurisdiction over determinations made under this section and may reconsider or revoke its decision at any time.

SECTION 15. AMENDMENT. Section 65-09-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-09-02. Application for compensation - Common-law defenses not available - Fund subrogated to recovery - Hearing - Time for filing. An employee whose employer is in violation of section ~~65-04-14~~ 12 of this Act, who has been injured in the course of employment, or the employee's dependents or legal representatives in case death has ensued, may file an application with the bureau for an award of compensation under this title and in addition may maintain a civil action against the employer for damages resulting from the injury or death. In the action, the employer may not assert the common-law defenses of:

1. The fellow servant rule.
2. Assumption of risk.
3. Contributory negligence.

The bureau is subrogated to the recovery made in the action against the uninsured employer. The subrogation interest is determined according to section 65-01-09, with the uninsured employer being the person other than the fund with a legal liability to pay damages with respect to the employee's injury or death. An injured employee, or the dependents of an employee who died as a result of a work-related accident, shall file the original claim for compensation within one year after the injury or within two years after the death. The bureau shall notify the claimant and the employer that the matter is being processed under this chapter, and subsequently shall hear and determine the application for compensation as it would for other claims before the bureau. A determination by the bureau that a person is not an employer required to obtain workers' compensation coverage under this title is a defense to any claim that the person failed to obtain coverage for the time period during which the determination is effective.

SECTION 16. AMENDMENT. Section 65-10-01 of the North Dakota Century Code is amended and reenacted as follows:

65-10-01. Appeal from decision of bureau. If the final action of the bureau denies the right of the claimant to participate at all in the fund on the ground that the injury was self-inflicted, or on the ground that the accident did not arise in the course of employment, or upon any other ground going to the basis of the claim, or if the bureau allows the claimant to participate in the fund to a lesser degree than that claimed by the claimant, if such allowance is less than the maximum allowance provided by this title, the claimant may appeal to the district court of the county wherein the injury was inflicted or of the county in which the claimant resides. An employer may also appeal a decision of the bureau in any injury case or a bureau decision issued under chapter 65-04, in the manner prescribed in this section. An appeal involving injuries allegedly covered by insurance provided under contracts with extraterritorial coverage shall be triable in the district court of Burleigh County. Any appeal under this section shall be taken in the manner provided in chapter 28-32. Any appeal to the district court shall be heard on the record, transmitted from the bureau, and, in the discretion of the court, additional evidence may be presented pertaining to the questions of law involved in the appeal.

²⁹¹ **SECTION 17. REPEAL.** Sections 65-01-05, 65-04-05, 65-04-12, 65-04-14, 65-04-23, 65-09-03, and 65-09-04 of the North Dakota Century Code are repealed.

Approved March 14, 2001
Filed March 14, 2001

²⁹¹ Section 65-01-05 was amended by section 1 of Senate Bill No. 2121, chapter 576.

CHAPTER 579**HOUSE BILL NO. 1260**

(Representatives Wald, Kasper, Skarphol)

**WORKERS' COMPENSATION THIRD-PARTY
RECOVERIES**

AN ACT to amend and reenact section 65-04-19.3 of the North Dakota Century Code, relating to third-party recovery on workers' compensation deductible accounts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-04-19.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-04-19.3. Premium calculation programs - Authority. Upon approval of its board of directors, the bureau may create and implement by emergency rulemaking actuarially sound employer premium calculation programs, including dividends, group insurance, premium deductibles, and reimbursement for medical expense assessments. Programs under this section may be created or modified by emergency rulemaking and must include requirements or incentives for the early reporting of injuries. An employer with a deductible policy under this section, who chooses to pursue a third-party action under section 65-01-09 after an injured worker and the bureau have chosen not to pursue the third-party action, may keep one hundred percent of the recovery obtained, regardless of the expense incurred in covering the injury and regardless of any contrary provision in section 65-01-09. If the employer pursues the third-party action pursuant to this section, neither the bureau nor the injured worker has any liability for sharing in the expense of bringing that action.

SECTION 2. EFFECTIVE DATE. This Act is effective for all claims filed after July 31, 2001.

Approved March 27, 2001
Filed March 27, 2001

CHAPTER 580

HOUSE BILL NO. 1161

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

PERMANENT IMPAIRMENT AWARDS

AN ACT to amend and reenact section 65-05-12.2 of the North Dakota Century Code, relating to workers' compensation permanent impairment awards; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-12.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-12.2. Permanent impairment - Compensation - Time paid. When a compensable injury causes permanent impairment, the bureau shall determine a permanent impairment award on the following terms:

1. If the compensable injury causes permanent impairment and the permanent impairment award payable by the bureau is at least two thousand dollars, the injured employee may defer payment of the permanent impairment award for a period of time not to exceed the date the employee reaches age sixty-five. A permanent impairment award payable by the bureau under this subsection must be paid to the employee in a lump sum that consists of the amount of the award plus any interest that has accrued at the actuarial discount rate in use by the bureau. The actuarial discount rate applied to the award is the average actuarial discount rate in effect for the period of deferment of the employee's award. The bureau shall adopt rules implementing any necessary procedures for award payments made under this subsection.
2. The bureau shall calculate the amount of the award by multiplying thirty-three and one-third percent of the average weekly wage in this state on the date of the impairment evaluation, rounded to the next highest dollar, by the number of weeks specified in subsection 10.
3. The bureau shall notify the employee by certified mail, to the last-known address of the employee, when that employee becomes potentially eligible for a permanent impairment award. After the bureau has notified the employee, the employee shall file, within one hundred eighty days from the date the employee was notified, a written request for an evaluation for permanent impairment. Failure to file the written request within the one hundred eighty-day period precludes an award under this section.
4. An injured employee is entitled to compensation for permanent impairment under this section only for those findings of impairment that are permanent and which were caused by the compensable injury. The bureau may not issue an impairment award for impairment findings due to unrelated, noncompensable, or preexisting conditions, even if these

conditions were made symptomatic by the compensable work injury, and regardless of whether section 65-05-15 applies to the claim.

5. An injured employee is eligible for an evaluation of permanent impairment only when all conditions caused by the compensable injury have reached maximum medical improvement. The injured employee's doctor shall report to the bureau the date an employee has reached maximum medical improvement and any evidence of impairment of function the injured employee has after that date. If the report states that the employee is potentially eligible for a permanent impairment award, the bureau shall provide notice to the employee as provided by subsection 3. If the injured employee files a timely written request under subsection 3, the bureau shall schedule an impairment evaluation by a doctor qualified to evaluate the impairment.
6. A doctor evaluating permanent impairment shall include a clinical report in sufficient detail to support the percentage ratings assigned. The bureau shall adopt administrative rules governing the evaluation of permanent impairment. These rules must incorporate principles and practices of the fifth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" modified to be consistent with North Dakota law, to resolve issues of practice and interpretation, and to address areas not sufficiently covered by the guides. ~~Until Subject to rules adopted under this subsection become effective, impairments must be evaluated under the fourth fifth edition, third printing, of the guides.~~
7. The bureau shall deduct, on a whole body impairment basis, from an award for impairment under this section, any previous impairment award for that same member or body part under the workers' compensation laws of any jurisdiction.
8. An injured employee is not entitled to a permanent impairment award due solely to pain.
9. If an employee dies, the right to any compensation payable pursuant to an impairment evaluation previously requested by the employee under subsection 3, which remains unpaid on the date of the employee's death, survives and passes to the employee's dependent spouse, minor children, parents, or estate, in that order. If the employee dies, only those findings of impairment which are objectively verifiable such as values for surgical procedures and amputations may be considered in a rating for impairment. Impairment findings not supported by objectively verifiable evidence may not be included in a rating for impairment. The deceased employee's dependents or representatives shall request an impairment award under this subsection within one year from the date of death of the employee.
10. If the injury causes permanent impairment, the award must be determined based on the percentage of whole body impairment in accordance with the following schedule:

For one to fifteen percent impairment	0 weeks
For sixteen percent impairment	10 weeks
For seventeen percent impairment	10 weeks
For eighteen percent impairment	15 weeks

For nineteen percent impairment	15 weeks
For twenty percent impairment	20 weeks
For twenty-one percent impairment	20 weeks
For twenty-two percent impairment	25 weeks
For twenty-three percent impairment	25 weeks
For twenty-four percent impairment	30 weeks
For twenty-five percent impairment	30 weeks
For twenty-six percent impairment	35 weeks
For twenty-seven percent impairment	35 weeks
For twenty-eight percent impairment	40 weeks
For twenty-nine percent impairment	45 weeks
For thirty percent impairment	50 weeks
For thirty-one percent impairment	60 weeks
For thirty-two percent impairment	70 weeks
For thirty-three percent impairment	80 weeks
For thirty-four percent impairment	90 weeks
For thirty-five percent impairment	100 weeks
For thirty-six percent impairment	110 weeks
For thirty-seven percent impairment	120 weeks
For thirty-eight percent impairment	130 weeks
For thirty-nine percent impairment	140 weeks
For forty percent impairment	150 weeks
For forty-one percent impairment	160 weeks
For forty-two percent impairment	170 weeks
For forty-three percent impairment	180 weeks
For forty-four percent impairment	190 weeks
For forty-five percent impairment	200 weeks
For forty-six percent impairment	210 weeks
For forty-seven percent impairment	220 weeks
For forty-eight percent impairment	230 weeks
For forty-nine percent impairment	240 weeks
For fifty percent impairment	260 weeks
For fifty-one percent impairment	280 weeks
For fifty-two percent impairment	300 weeks
For fifty-three percent impairment	320 weeks
For fifty-four percent impairment	340 weeks
For fifty-five percent impairment	360 weeks
For fifty-six percent impairment	380 weeks
For fifty-seven percent impairment	400 weeks
For fifty-eight percent impairment	420 weeks
For fifty-nine percent impairment	440 weeks
For sixty percent impairment	465 weeks
For sixty-one percent impairment	490 weeks
For sixty-two percent impairment	515 weeks
For sixty-three percent impairment	540 weeks
For sixty-four percent impairment	565 weeks
For sixty-five percent impairment	590 weeks
For sixty-six percent impairment	615 weeks
For sixty-seven percent impairment	640 weeks
For sixty-eight percent impairment	665 weeks
For sixty-nine percent impairment	690 weeks
For seventy percent impairment	715 weeks
For seventy-one percent impairment	740 weeks
For seventy-two percent impairment	765 weeks
For seventy-three percent impairment	790 weeks
For seventy-four percent impairment	815 weeks

For seventy-five percent impairment	840 weeks
For seventy-six percent impairment	865 weeks
For seventy-seven percent impairment	890 weeks
For seventy-eight percent impairment	915 weeks
For seventy-nine percent impairment	940 weeks
For eighty percent impairment	965 weeks
For eighty-one percent impairment	990 weeks
For eighty-two percent impairment	1015 weeks
For eighty-three percent impairment	1040 weeks
For eighty-four percent impairment	1065 weeks
For eighty-five percent impairment	1090 weeks
For eighty-six percent impairment	1115 weeks
For eighty-seven percent impairment	1140 weeks
For eighty-eight percent impairment	1165 weeks
For eighty-nine percent impairment	1190 weeks
For ninety percent impairment	1215 weeks
For ninety-one percent impairment	1240 weeks
For ninety-two percent impairment	1265 weeks
For ninety-three percent impairment	1290 weeks
For ninety-four percent impairment	1320 weeks
For ninety-five percent impairment	1350 weeks
For ninety-six percent impairment	1380 weeks
For ninety-seven percent impairment	1410 weeks
For ninety-eight percent impairment	1440 weeks
For ninety-nine percent impairment	1470 weeks
For one hundred percent impairment	1500 weeks

11. An amputation of a finger or toe at the level of the distal interphalangeal joint or proximal to that joint, or the thumb or the great toe at the interphalangeal joint or proximal to that joint, which is determined to result in a whole body impairment of less than sixteen percent and which is not identified in the following schedule, is payable as a sixteen percent impairment. If an evaluation for the loss of an eye or for an amputation results in an award that is less than the number of weeks identified in the following schedule, the bureau shall pay an award equal to the number of weeks set out in the following schedule:

<u>For amputation of a thumb</u>	<u>65 weeks</u>
<u>For amputation of the second or distal phalanx of the thumb</u>	<u>28 weeks</u>
<u>For amputation of the first finger</u>	<u>40 weeks</u>
<u>For amputation of the middle or second phalanx of the first finger</u>	<u>28 weeks</u>
<u>For amputation of the third or distal phalanx of the first finger</u>	<u>22 weeks</u>
<u>For amputation of the second finger</u>	<u>30 weeks</u>
<u>For amputation of the middle or second phalanx of the second finger</u>	<u>22 weeks</u>
<u>For amputation of the third or distal phalanx of the second finger</u>	<u>14 weeks</u>
<u>For amputation of the third finger</u>	<u>20 weeks</u>
<u>For amputation of the middle or second phalanx of the third finger</u>	<u>16 weeks</u>
<u>For amputation of the fourth finger</u>	<u>16 weeks</u>
<u>For amputation of the middle or second phalanx of the fourth finger</u>	<u>12 weeks</u>

<u>For amputation of the leg at the hip</u>	<u>234 weeks</u>
<u>For amputation of the leg at or above the knee</u>	<u>195 weeks</u>
<u>For amputation of the leg at or above the ankle</u>	<u>150 weeks</u>
<u>For amputation of a great toe</u>	<u>30 weeks</u>
<u>For amputation of the second or distal phalanx of the great toe</u>	<u>18 weeks</u>
<u>For amputation of any other toe</u>	<u>12 weeks</u>
<u>For loss of an eye</u>	<u>150 weeks</u>

The award for the amputation of more than one finger of one hand may not exceed an award for the amputation of a hand. The award for the amputation of more than one toe of one foot may not exceed an award for the amputation of a foot. If any of the amputations or losses set out in this subsection combine with other impairments for the same work-related injury or condition, the bureau shall issue an impairment award based on the greater of the number of weeks allowed for the combined rating established under the fifth edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" or the number of weeks set forth in this subsection.

12. If there is a medical dispute regarding the percentage of an injured employee's permanent impairment, all relevant medical evidence must be submitted to an independent doctor who has not treated the employee and who has not been consulted by the bureau in relation to the injury upon which the impairment is based. The bureau shall establish lists of doctors who are qualified by ~~their~~ the doctor's training, experience, and area of practice to rate permanent impairments caused by various types of injuries. The bureau shall define, by rule, the process by which the bureau and the injured employee choose an independent doctor or doctors to review a disputed permanent impairment evaluation or rating. The decision of the independent doctor or doctors chosen under this process is presumptive evidence of the degree of permanent impairment of the employee which can only be rebutted by clear and convincing evidence. This subsection does not impose liability on the bureau for an impairment award for a rating of impairment for a body part or condition the bureau has not determined to be compensable as a result of the injury. The employee bears the expense of witness fees of the independent doctor or doctors if the employee disputes the findings of the independent doctor or doctors.
13. An attorney's fees are not payable unless there is a bona fide dispute as to the percentage of the employee's permanent impairment or unless there is a dispute as to the employee's eligibility for an award for permanent partial impairment. An attorney's fees payable in connection with a permanent impairment dispute may not exceed twenty percent of the additional amount awarded upon final resolution of the dispute, subject to the maximum fees established pursuant to section 65-02-08.
14. An attorney may not seek or obtain from an employee through a contingent fee arrangement, or on a percentage basis, costs or fees payable in connection with the award or denial of compensation for permanent impairment. A permanent impairment award is exempt from the claims of creditors, including an employee's attorney, except as provided by section 65-05-29.

SECTION 2. EFFECTIVE DATE. This Act is effective for impairment evaluations performed after July 31, 2001.

Approved March 27, 2001

Filed March 27, 2001

CHAPTER 581

SENATE BILL NO. 2134

(Senator Krebsbach)

(Representative Boucher)

(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION SCHOLARSHIP FUND

AN ACT to amend and reenact section 65-05-20.1 of the North Dakota Century Code, relating to removing the expiration date of the workers' compensation scholarship fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-20.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05-20.1. (~~Effective through July 31, 2001~~) Scholarship fund - Rules. The bureau may establish a scholarship fund to provide scholarships for the spouse and dependent children of a worker who dies as a result of a compensable work-related injury, if the spouse and children have received benefits under section 65-05-17. The bureau may also grant scholarships to injured workers for whom the bureau determines a scholarship would be beneficial and appropriate because of exceptional circumstances as determined by the bureau. Scholarships are payable to an accredited institution of higher education or an institution of technical education on behalf of a student attending that institution. The total amount awarded annually in scholarships may not exceed one hundred fifty thousand dollars. The maximum amount payable on behalf of an applicant is three thousand dollars per year for no more than five years. Scholarships must be awarded by a panel chosen by the bureau. The bureau shall adopt rules establishing selection criteria and obligations associated with the program and identifying information an applicant is required to submit to determine an appropriate scholarship award. There is no right to reconsideration, rehearing, or appeal from any decision regarding the award, denial, or amount of a scholarship.

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

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 582

HOUSE BILL NO. 1162

(Industry, Business and Labor Committee)
(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION SUPPLEMENTARY BENEFITS

AN ACT to amend and reenact section 65-05.2-02 of the North Dakota Century Code and section 6 of chapter 556 of the 1999 Session Laws, relating to payment of supplementary benefits for certain workers' compensation benefit recipients; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05.2-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-05.2-02. Supplementary benefits - Amount.

1. A claimant whose weekly benefit rate is less than sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit that, when added to the weekly permanent total disability benefit or death benefit, results in a combined benefit of at least sixty percent of the state's average weekly wage on July first of each year. equals the ratio of that claimant's weekly benefit to the state's average weekly wage on the date of the claimant's first disability, times the state's average weekly wage in effect at the date eligibility for supplementary benefits is achieved. The bureau shall determine on an annual basis, for a claimant who receives a supplementary benefit under this subsection, supplementary benefit increases equal to a percentage of that claimant's combined weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. For purposes of this section, combined weekly benefit means the weekly benefit for which the claimant is eligible before any applicable social security offset plus the amount of weekly supplementary benefits for which the claimant is eligible.
2. A claimant whose weekly benefit rate is greater than or equal to sixty percent of the state's average weekly wage, who is eligible for supplementary benefits and who is receiving permanent total disability benefits, or death benefits regardless of the date of death, is entitled to receive a weekly supplementary benefit equal to a percentage of that claimant's weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage. The bureau shall determine on an annual basis, for that claimant, supplementary benefit increases equal to a percentage of that claimant's combined weekly benefit. That percentage is equal to the annual percentage change in the state's average weekly wage.

3. An annual recalculation of supplementary benefits may not result in a rate less than the previous rate. If a claim has been accepted on an aggravation basis under section 65-05-15 and the claimant is eligible for supplementary benefits, the claimant's supplementary benefit must be proportionally calculated.

SECTION 2. AMENDMENT. Section 6 of chapter 556 of the 1999 Session Laws is amended and reenacted as follows:

SECTION 6. EFFECTIVE DATE. Sections 2 and 3 ~~and the reduction in the waiting period in section 4~~ of this Act are effective for all claims for injuries occurring after July 31, 1999. The reduction in the waiting period in section 4 of this Act is effective August 1, 2006, for all claims, regardless of the date of injury. The remainder of section 4 of this Act is effective August 1, 1999, for all claims regardless of the date of injury.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective for all claims for injuries occurring after July 31, 2001.

Approved April 13, 2001
Filed April 16, 2001

CHAPTER 583**HOUSE BILL NO. 1127**

(Representative Keiser)

**ROUGH RIDER INDUSTRIES WORKERS'
COMPENSATION COVERAGE**

AN ACT to repeal section 9 of chapter 541 of the 1997 Session Laws, relating to elimination of the expiration date of laws relating to workers' compensation coverage for inmates engaged in work programs through roughrider industries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 9 of chapter 541 of the 1997 Session Laws is repealed.

Approved March 12, 2001

Filed March 12, 2001

CHAPTER 584**HOUSE BILL NO. 1129**

(Representatives Drovdal, Kempenich, Rennerfeldt)
(Senators Klein, Urlacher)

**EMPLOYER'S CHILDREN WORKERS'
COMPENSATION COVERAGE**

AN ACT to amend and reenact section 65-07-03 of the North Dakota Century Code, relating to workers' compensation coverage for children of employers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-07-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

65-07-03. Determination of weekly wage for premium purposes. If the bureau enters into a contract for insurance under this chapter, the premium for such protection ~~shall~~ must be based on:

1. The amount of money derived on an annual basis from the business of an employer or self-employed person as outlined in subdivision b of subsection 5 of section 65-01-02 for purposes of determining the premium for coverage of an employer, an employer's spouse, an employer's child over the age of seventeen, or a self-employed person. This amount may not be less than the limited payroll required to be reported for an employee in subsection 1 of section 65-04-04.2.
2. A reasonable wage as determined by the bureau for ~~said~~ employees in the same class of industry that the volunteer organization is engaged.
3. Actual wages paid to a clerk, an assessor, a treasurer, or a member of the board of supervisors of an organized township, if the contract for insurance is to provide protection for a person mentioned in this subsection and that person is not employed by the township in any other capacity.
4. Actual wages paid to an employer's child if that child is under the age of eighteen.

Approved March 12, 2001
Filed March 12, 2001

VETOED MEASURES

CHAPTER 585

HOUSE BILL NO. 1228

(Representatives Grande, Devlin, Koppelman)
(Senators Andrist, Stenehjem)

ADMINISTRATIVE RULES COMMITTEE RULE CALL UP

AN ACT to create and enact a new section to chapter 28-32 of the North Dakota Century Code, relating to authority of the administrative rules committee to call up existing administrative rules for review; to amend and reenact subsection 1 of section 28-32-03.3 of the North Dakota Century Code or in the alternative to amend and reenact subsection 1 of section 28-32-18 of the North Dakota Century Code, relating to authority of the administrative rules committee; and to provide an effective date.

VETO

April 5, 2001

The Honorable LeRoy Bernstein
Speaker of the House
House Chamber
State Capitol
Bismarck, ND 58505

Re: House Bill 1228

Dear Speaker Bernstein:

I am returning HB 1228 and hereby veto the same. The bill would allow the Administrative Rules Committee to void any rule for reasons described in section 28-32-03.3. The Administrative Rules Committee is now limited to voiding any rules prospectively, meaning that it can "call up" only those rules being considered for adoption. Its authority does not extend to existing rules. HB 1228 would expand that authority and allow the Committee to "reach back" and call up any administrative rule regardless of how long it had been in place. My primary concern is the uncertainty that it creates in the business community and amount the taxpayers, who must know the rules under which they make investments and other decisions.

Administrative rules serve a valuable function within government by providing the framework under which many activities are conducted. They represent the Legislature's delegation of its authority to an administrative agency. An administrative rule can only be adopted after careful examination by the agency, approval by the Attorney General as to the rule's lawfulness and a review by the Legislative Council and the Administrative Rules Committee. Only then does a rule become valid.

The State has improved administrative rule making over the past several sessions. We provided the Administrative Rules Committee with limited oversight in 1995, giving the Committee the ability to reject proposed rules. We have required an economic analysis of the regulated community and a takings analysis by the agency. (NDCC 28-32-02.2 and 28-32-02.5) We require the agency to provide the Legislative Council with a copy of the proposed rule (Ch. 286, 1999 S.L.) and require agencies to amend and repeal rules adopted under federal guidelines that are not relevant to North Dakota's regulatory program. (Ch. 289, 1999 S.L.) This session we will require agencies to adopt procedures to allow citizens to request notice when a proposed rule will be reviewed by the Administrative Rules Committee (HB 1027); will require emergency rules to be approved by the Governor in advance (HB 1028); and will require the agency to provide a copy of each written comment and a summary of any oral comment to the Legislative Council as part of the publication of the rule. In short, we are improving the responsiveness of administrative rules. But, I believe we run the risk of going too far with HB 1228.

If there is a need to adjust existing administrative rules, there are a number of ways to do so. For example:

- The agency may review the rule itself.
- A taxpayer has the right to petition the agency for review of the existing rule, which is expressly provided by statute.
- If the taxpayer is dissatisfied with the agency response he can seek assistance from the executive branch or a legislator.
- The courts provide a remedy as well.
- And ultimately, the Legislature as a whole can review and modify any rule it chooses through the passage of a bill.

Finally, I am concerned about the direction we may be taking by expanding the Committee's authority in contravention of the authority of the entire Legislature. HB 1228 contemplates giving the Committee the authority to make law by striking down administrative rules, a direction that runs contrary to constitutional limits. This constitutional problem of delegating authority to a committee has been noted in the bill's own language that contemplates effective dates based upon a finding of unconstitutionality and by Justice Dale Sandstrom in the case of Ecklund v. Ecklund 538, N.W.2d. 182 (N.D. 1995).

I believe we are on the right track regarding administrative rules. I do not want to inject uncertainty into the private sector that needs confidence in the rules upon which it makes decisions. HB 1228 encroaches upon that certainty and the State's ability to provide a friendly arena in which to do business. For these reasons I must return HB 1228 and respectfully veto the same.

Sincerely,

John Hoeven
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1030 does not become effective, subsection 1 of section 28-32-03.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The legislative council's committee on administrative rules may find that all or any portion of a rule is void if that finding is made within ninety days after review of the rule is reopened under section 5 of this Act, that rule is initially considered by the committee within ninety days after the date of the administrative code supplement in which the rule change appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that rule is initially considered by the committee at the first meeting of the administrative rules committee following the regular session of the legislative assembly. The committee on administrative rules may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
 - a. An absence of statutory authority.
 - b. An emergency relating to public health, safety, or welfare.
 - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
 - d. A conflict with state law.
 - e. Arbitrariness and capriciousness.
 - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under subsection 3 of section 28-32-02.

²⁹² **SECTION 2. AMENDMENT.** Subsection 1 of section 28-32-18 of the North Dakota Century Code as created by section 11 of House Bill No. 1030, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

1. The legislative council's administrative rules committee may find that all or any portion of a rule is void if (a) that finding is made within ninety days after review of the rule is reopened under section 6 of this Act, (b) the rule is initially considered by the committee within ninety days after the date of the administrative code supplement in which the rule change appears, or, (c) for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that rule is initially considered by the committee at the first meeting of the administrative rules committee following the regular session of the

²⁹² Section 28-32-18 was created by section 12 of House Bill No. 1030, chapter 293, and amended by section 4 of House Bill No. 1228, chapter 585.

legislative assembly. The administrative rules committee may find a rule or portion of a rule void if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:

- a. An absence of statutory authority.
- b. An emergency relating to public health, safety, or welfare.
- c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
- d. A conflict with state law.
- e. Arbitrariness and capriciousness.
- f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.

SECTION 3. AMENDMENT. If House Bill No. 1030 does not become effective, subsection 1 of section 28-32-03.3 of the North Dakota Century Code as amended by section 4 of chapter 310 of the 1995 Session Laws as amended by section 2 of chapter 279 of the 1997 Session Laws is amended and reenacted as follows:

1. The legislative council's committee on administrative rules may find, for any reason under this subsection, that all or any portion of a rule should be reviewed by the legislative assembly, and the committee may suspend the rule or portion of a rule under this subsection if the suspension is made within ninety days after review of the rule is reopened under section 5 of this Act, the rule is initially considered by the committee within ninety days after the date of the administrative code supplement in which the rule change appears or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that rule is initially considered by the committee at the first meeting of the administrative rules committee following the regular session of the legislative assembly. A rule or a portion of a rule suspended under this subsection becomes permanently ineffective unless it is ratified by both houses of the legislative assembly during the next session of the legislative assembly, in which case it is effective as of the date of ratification by the second house of the legislative assembly. An agency seeking ratification of its rule shall introduce a bill for that purpose. The committee on administrative rules may suspend a rule or portion of a rule if the committee specifically finds that, with regard to the rule, there is:
 - a. An absence of statutory authority.
 - b. An emergency relating to public health, safety, or welfare.
 - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
 - d. A conflict with state law.

- e. Arbitrariness and capriciousness.
- f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under subsection 3 of section 28-32-02.

²⁹³ **SECTION 4. AMENDMENT.** Subsection 1 of section 28-32-18 of the North Dakota Century Code, as amended by section 12 of House Bill No. 1030, as approved by the fifty-seventh legislative assembly, is amended and reenacted as follows:

1. The legislative council's administrative rules committee may find, for any reason under this subsection, that all or any portion of a rule should be reviewed by the legislative assembly ~~and the~~. The committee may suspend the rule or portion of a rule under this subsection if the finding that the rule should be reviewed by the legislative assembly is made within ninety days after review of the rule is reopened under section 6 of this Act, or the rule is initially considered by the committee within ninety days after the date of the administrative code supplement in which the rule change appears, or, for rule changes appearing in the administrative code supplement from November first immediately preceding a regular session of the legislative assembly through the following May first, if that the rule is initially considered by the committee at the first meeting of the administrative rules committee following the regular session of the legislative assembly. A rule or portion of a rule suspended under this subsection becomes permanently ineffective unless it is ratified by both houses of the legislative assembly during the next session of the legislative assembly, in which case it is effective as of the date of ratification by the second house of the legislative assembly. An agency seeking ratification of its rule shall introduce a bill for that purpose. The administrative rules committee may suspend a rule or portion of a rule if the committee makes the specific finding that, with regard to that rule or portion of a rule, there is:
- a. An absence of statutory authority.
 - b. An emergency relating to public health, safety, or welfare.
 - c. A failure to comply with express legislative intent or to substantially meet the procedural requirements of this chapter for adoption of the rule.
 - d. A conflict with state law.
 - e. Arbitrariness and capriciousness.
 - f. A failure to make a written record of its consideration of written and oral submissions respecting the rule under section 28-32-11.

²⁹³ Section 28-32-18 was created by section 12 of House Bill No. 1030, chapter 293, and amended by section 2 of House Bill No. 1228, chapter 585.

SECTION 5. If House Bill No. 1030 does not become effective, a new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Review of administrative rules reopened. The administrative rules committee may reopen review of an administrative rule upon at least thirty days' prior notice to the adopting agency of the time the committee will consider the rule. The committee shall notify the adopting agency of the reason review of the rule is reopened and the adopting agency shall provide a written response to the committee's expressed concerns. A rule for which review has been reopened under this section is subject to the authority of the administrative rules committee under section 28-32-03.3.

SECTION 6. If House Bill No. 1030 becomes effective, a new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Review of administrative rules reopened. The administrative rules committee may reopen review of an administrative rule upon at least thirty days' prior notice to the adopting agency of the time the committee will consider the rule. The committee shall notify the adopting agency of the reason review of the rule is reopened and the adopting agency shall provide a written response to the committee's expressed concerns. A rule for which review has been reopened under this section is subject to the authority of the administrative rules committee under section 28-32-18.

SECTION 7. EFFECTIVE DATE. Sections 1, 2, 5, and 6 of this Act are effective for administrative rules for which review has been reopened by the administrative rules committee after July 31, 2001. Section 3 of this Act is suspended from operation, but becomes effective retroactive to August 1, 1997, upon a ruling by the North Dakota supreme court that any portion of subsection 1 of section 28-32-03.3 as created by section 3 of chapter 310 of the 1995 Session Laws, and as it is subsequently amended, is unconstitutional. Section 4 of this Act is suspended from operation and becomes effective retroactive to August 1, 2001, upon a ruling by the North Dakota supreme court that any portion of subsection 1 of section 28-32-18 as created by section 11 of House Bill No. 1030 is unconstitutional.

Disapproved April 5, 2001

Filed April 11, 2001

CHAPTER 586**SENATE BILL NO. 2012**

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

INTERSTATE HIGHWAY SPEED LIMIT

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 provide for a legislative council study; to provide a contingent appropriation; to amend and reenact section 39-06-19, subsection 1 of section 39-06.2-09, and section 39-09-02 of the North Dakota Century Code, relating to highways and operators' licenses; and to declare an emergency.

VETO

April 28, 2001

The Honorable Jack Dalrymple
Senate Chambers
President of the Senate
State Capitol
Bismarck, ND 58505

RE: Senate Bill 2012

Dear President Dalrymple:

Attached please find Senate Bill 2012, section 7 of which I hereby veto. Section 7 of the bill increases the speed limit upon the interstate highways of North Dakota to 75 miles per hour. This is a policy I cannot endorse because we do not have adequate enforcement mechanisms in place to accommodate this increase in speed limits.

Specifically, Senate Bill 2088 makes adjustments to the fees and points assessed for speeding, but does not adequately address higher speed limits upon the interstates. In short, we would be left with a higher speed limit, without adequately addressing penalties for exceeding those new limits.

For these reasons, I respectfully veto section 7 of the bill and return it to the Senate.

Sincerely,

John Hoeven
Governor

Disapproved April 28, 2001
Filed May 3, 2001

NOTE: For the full text of Senate Bill No. 2012, including section 7, see chapter 37.

CHAPTER 587**HOUSE BILL NO. 1012**
(Appropriations Committee)
(At the request of the Governor)**DEPARTMENT OF HUMAN SERVICES EXECUTIVE
BUDGET RECOMMENDATION**

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 for legislative council studies; to provide an exception to section 54-44.1-06 of the North Dakota Century Code, relating to the preparation of the department of human services appropriations bill for the 2003-05 biennium; to provide statements of legislative intent; to provide an exception to section 54-16-04 of the North Dakota Century Code, relating to emergency commission approval for line item transfers; to provide for basic care facility rates; to create and enact a new subsection to section 50-10-06 of the North Dakota Century Code, relating to eligibility for children's special health services; to amend and reenact subsection 2 of section 25-02-01.1, subsection 3 of section 50-01.2-03.2, and section 50-09-06.1 of the North Dakota Century Code, relating to compensation for members of the state hospital governing body, county reimbursements, and assignment of support rights; to provide an effective date; and to declare an emergency.

VETO

May 9, 2001

The Honorable LeRoy Bernstein
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

Dear Speaker Bernstein:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 21 of House Bill 1012 and respectfully return it to the House.

Section 21 would require the Office of the Budget to submit a Department of Human Services appropriation bill for the 2003-05 biennium with the same funding line items and employee levels as authorized by the legislature for the 2001-03 biennium.

I object to this item in HB 1012 because it intrudes upon functions of the executive branch and violates the separation of governmental powers established by the North Dakota Constitution. Furthermore, it is inconsistent with existing statutory law and, finally, would be impractical in its application.

The North Dakota Supreme Court instructs us that the creation, within our constitution, of legislative, executive and judicial branches of government serves to apportion governmental powers. There is an implied exclusion of each branch from

the functions of the others. **City of Carrington v. Foster County**, 166 N.W.2d. 377 (ND 1969).

The function of the executive branches to manage the affairs of the state and that includes the careful budgeting of resources appropriated by the Legislature. This budgeting process necessarily involves making recommendations to the Legislature that contain the executive branch's assessment of the amount and preferred allocation of resources needed to fulfill legislative policies. Section 54.44.1-06, NDCC, codifies these principles.

Section 21 of HB 1012 requires the executive branch to submit an appropriation bill that does not allow for the proper assessment of the needs of the Department of Human Services for the ensuing biennium. In doing this, it interferes with an important executive function.

Furthermore, I believe it is inconsistent with the longstanding procedure for submission of appropriation bills set forth by the Legislature in 54-44.1-06, NDCC. That procedure authorizes the executive branch to use its experience and expertise in submitting a meaningful budget recommendation to the Legislature for its consideration. This process has served North Dakota well for at least the last 18 legislative sessions, and there is no persuasive reason cited in the legislative history of HB 1012 to depart from it.

Finally, Section 21 promises to be impractical in its application. It does not accommodate the changes that occur in an agency as priorities shift and programs change over the course of a biennium.

For these reasons, I have vetoed section 21 of House Bill 1012.

Sincerely,

John Hoeven
Governor

Disapproved May 9, 2001
Filed May 10, 2001

NOTE: For the full text of House Bill No. 1012, including section 21, see chapter 12.

CHAPTER 588**HOUSE BILL NO. 1015**
(Appropriations Committee)
(At the request of the Governor)**ELIMINATION OF CERTAIN DEPUTY POSITIONS**

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 other appropriations; to provide for various transfers and financial transactions; to provide an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide statements of legislative intent; to provide a conditional exemption for certain state property from special assessments for flood control; to provide for additional lodging reimbursement for members of the legislative assembly; to provide levee protection funding authority; to provide for forgiveness of the Fargo family healthcare center debt; to provide for a legislative council study; to create and enact a new section to chapter 15-10, a new section to chapter 54-44.1, and a new section to chapter 65-04 of the North Dakota Century Code, relating to local fund sources for capital construction projects, new building construction cost-benefit analyses, and a state entities workers' compensation account; to amend and reenact section 6-08.3-13, subsection 3 of section 50-01.2-03.2, section 54-16-01, and section 54-23.2-09 of the North Dakota Century Code, relating to interstate banking, county reimbursements, membership of the emergency commission, and provision of 911 services by the state radio communications division; to repeal section 18 of chapter 37 of the 1995 Session Laws and section 12 of chapter 15 of the 1997 Session Laws, relating to the provision of 911 services by the state radio communications division; to provide an expiration date; and to declare an emergency.

VETO

May 9, 2001

The Honorable LeRoy Bernstein
Speaker of the House
North Dakota House of Representatives
State Capitol
Bismarck, ND 58505

Dear Speaker Bernstein:

I have signed House Bill 1015, but respectfully veto section 20 of the bill, pursuant to Article V, Section 9 of the North Dakota Constitution.

Section 20 provides that the Legislature intends that appropriations measures for all agencies with less than 30 FTEs not include funding for deputy positions, and directs the Governor to submit legislation to eliminate the authority to appoint deputies in those agencies.

I cannot support the direction and effect of this legislation for several reasons.

First, it removes the flexibility of administrators to hire staff who serve in unclassified positions in an agency. Eliminating the funding will not necessarily reduce costs, but is likely to have the unintended effect of requiring an administrator to use classified staff, who were hired by previous management and may not share his or her management philosophy.

Second, deputies serve important functions in state government, are relied upon by administrators and elected officials, and often serve in their absence. Eliminating the deputy may impede the orderly and efficient operation of state government.

Third, the section impinges upon the Governor's ability to fashion a budget as directed by North Dakota law. The executive budget recommendation is based upon a careful examination of an agency's needs and funding requests. Section 20 dismisses that process and applies a universal rule without considering the needs and responsibilities of each agency, and approach that will not produce the desired effect.

Finally, I have strong concerns about the Legislature requiring the Governor to introduce legislation, a requirement I believe contravenes the separation of powers doctrine. The bill directs the executive branch to dutifully introduce legislation to meet a legislative objective, with which the Governor may not agree. The Legislature is free to introduce legislation to advance its own objectives without directing the executive branch to do so.

For these reasons, I have vetoed Section 20 of House Bill 1015.

Sincerely,

John Hoeven
Governor

Disapproved May 9, 2001
Filed May 10, 2001

NOTE: For the full text of House Bill No. 1015, including section 20, see chapter 15.

CHAPTER 589

SENATE BILL NO. 2004 (Appropriations Committee) (At the request of the Governor)

DEPARTMENT OF HEALTH EXECUTIVE BUDGET RECOMMENDATION

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 of the North Dakota Century Code, relating to a donated dental services program; to amend and reenact subdivision b of subsection 1 of section 14-02.1-02.1 and section 23-01-05 of the North Dakota Century Code, relating to information regarding fetal development and to the qualifications of the state health officer; to provide an exception to section 54-44.1-06 of the North Dakota Century Code, relating to the preparation of the state department of health appropriations bill for the 2003-05 biennium; and to provide statements of legislative intent.

VETO

May 9, 2001

The Honorable Jack Dalrymple
President of the Senate
State Capitol
Bismarck, ND 58505

Dear President Dalrymple:

Pursuant to Article V, Section 9 of the North Dakota Constitution, I have vetoed Section 13 of Senate Bill 2004 and respectfully return it to the Senate.

Section 13 would require the Office of the Budget to submit a Health Department appropriation bill for the 2003-05 biennium with the same funding line items and employee levels as authorized by the legislature for the 2001-03 biennium.

I object to this item in SB 2004 because it intrudes upon functions of the executive branch and violates the separation of governmental powers established by the North Dakota Constitution. Furthermore, it is inconsistent with existing statutory law and, finally, would be impractical in its application.

The North Dakota Supreme Court instructs us that the creation, within our constitution, of legislative, executive and judicial branches of government serves to apportion governmental powers. There is an implied exclusion of each branch from the functions of the others. **City of Carrington v. Foster County**, 166 N.W.2d. 377 (ND 1969).

The function of the executive branch is to manage the affairs of the state and that includes the careful budgeting of resources appropriated by the Legislature. This budgeting process necessarily involves making recommendations to the Legislature that contain the executive branch's assessment of the amount and preferred

allocation of resources needed to fulfill legislative policies. Section 54-44.1-06, NDCC, codifies these principles.

Section 13 of SB 2004 requires the executive branch to submit an appropriation bill that does not allow for the proper assessment of the needs of the Health Department for the ensuing biennium. In doing this, it interferes with an important executive function.

Furthermore, I believe it is inconsistent with the longstanding procedure for submission of appropriations bills set forth by the Legislature in 54-44.1-06, NDCC. That procedure authorizes the executive branch to use its experience and expertise in submitting a meaningful budget recommendation to the Legislature for its consideration. This process has served North Dakota well for at least the last 18 legislative sessions, and there is no persuasive reason cited in the legislative history of SB 2004 to depart from it.

Finally, Section 13 promises to be impractical in its application. It does not accommodate the changes that occur in an agency as priorities shift and programs change over the course of a biennium.

For these reasons, I have vetoed Section 13 of Senate Bill 2004.

Sincerely,

John Hoeven
Governor

Disapproved May 9, 2001
Filed May 10, 2001

NOTE: For the full text of Senate Bill No. 2004, including section 13, see chapter 29.

CONSTITUTIONAL AMENDMENTS APPROVED

CHAPTER 590

SENATE CONCURRENT RESOLUTION NO. 4016

(Senators Holmberg, Cook, C. Nelson)
(Representatives Berg, Delmore, Drovdal)

STATE BOARD OF HIGHER EDUCATION MEMBERSHIP

A concurrent resolution for the amendment of subsection 2 of section 6 of article VIII of the Constitution of North Dakota, relating to the membership of the state board of higher education.

STATEMENT OF INTENT

This amendment would change from one to two individuals holding a bachelor's degree from a state institution of higher education who could serve on the state board of higher education at one time.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 6 of article VIII 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 2000, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Subsection 2 of section 6 of article VIII of the Constitution of North Dakota is amended and reenacted as follows:

2. a. The state board of higher education consists of eight members. The governor shall appoint seven members who are qualified electors and taxpayers of the state, and who have resided in this state for not less than five years immediately preceding their appointments. These seven appointments are subject to confirmation by the senate.

The governor shall appoint as the eighth member of the board a full-time resident student in good academic standing at an institution under the jurisdiction of the state board. Except for the student member, no more than ~~one person~~ two persons holding a bachelor's degree from a particular institution under the jurisdiction of the state board of higher education may serve on the board at any one time. Except for the student member, no person employed by any institution under the control of the board shall serve as a member of the board and no employee of any such institution may

be eligible for membership on the state board of higher education for a period of two years following the termination of employment.

The governor shall nominate from a list of three names for each position, selected by action of four of the following five persons: the president of the North Dakota education association, the chief justice of the supreme court, the superintendent of public instruction, the president pro tempore of the senate, and the speaker of the house of representatives and, with the consent of a majority of the members-elect of the senate, shall appoint from the list to the state board of higher education seven members. The governor shall ensure that the board membership is maintained in a balanced and representative manner. The term of office of members appointed to fill vacancies at the expiration of said terms shall be for four years, and in the case of vacancies otherwise arising, appointments shall be made only for the balance of the term of the members whose places are to be filled. A member may not be appointed to serve for more than two terms. If a member is appointed to fill a vacancy and serves two or more years of that term, the member is deemed to have served one full term.

- b. In the event any nomination made by the governor is not consented to and confirmed by the senate, the governor shall again nominate a candidate selected from a new list. The nomination shall be submitted to the senate for confirmation and the proceedings shall continue until an appointee has been confirmed by the senate or the session of the legislature has adjourned.
- c. If a term expires or a vacancy occurs when the legislature is not in session, the governor may appoint from a list selected as provided, a member who shall serve until the opening of the next session of the legislature, at which time the appointment must be certified to the senate for confirmation. If the appointee is not confirmed by the thirtieth legislative day of the session, the office shall be deemed vacant and the governor shall nominate another candidate for the office. The same proceedings shall be followed as are set forth in this section. If the legislature is in session at any time within six months prior to the date of the expiration of the term of any member, the governor shall nominate a successor from a list selected as above set forth, within the first thirty days of the session and upon confirmation by the senate the successor shall take office at the expiration of the incumbent's term. No person who has been nominated and whose nomination the senate has failed to confirm is eligible for an interim appointment. On or before July first of each year, beginning in 1995, the governor shall appoint a student member from a list of names recommended by the executive board of the North Dakota student association for a term of one year, beginning on July first. A student member may not serve more than two consecutive terms.

CHAPTER 591

SENATE CONCURRENT RESOLUTION NO. 4017

(Senators W. Stenehjem, Andrist, Holmberg)
(Representatives DeKrey, Delmore, Devlin)

EXECUTIVE BRANCH OFFICER ELECTION

A concurrent resolution for the amendment of section 5 of article V of the Constitution of North Dakota, relating to the election of executive branch officers.

STATEMENT OF INTENT

This amendment provides that one-half of the elected state officials will be chosen by voters in each election year. To start this arrangement, the agriculture commissioner, attorney general, secretary of state, and tax commissioner will be elected for two-year terms in 2004, and thereafter will be elected to four-year terms.

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 V 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 2000, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 5 of article V of the Constitution of North Dakota is amended and reenacted as follows:

Section 5. The qualified electors shall choose the elected state officials at a time designated by the legislative assembly. The elected state officials shall serve until their successors are duly qualified. Terms of office of the elected officials except the public service commissioners are four years, except that in 2004 the agriculture commissioner, attorney general, secretary of state, and tax commissioner are elected to a term of two years. The terms of the public service commissioners are six years, so arranged that one of them is elected every two years. The terms of the governor and lieutenant governor begin on December fifteenth following their election.

If two or more candidates for any executive office other than for governor and lieutenant governor receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office.

Approved June 13, 2000

49,391 to 30,431

NOTE: This was measure No. 2 on the 2000 primary election ballot.

CHAPTER 592**SENATE CONCURRENT RESOLUTION NO. 4023**

(Senators Solberg, Grindberg, O'Connell)

LEGISLATIVE ASSEMBLY VACANCY FILLING

A concurrent resolution for the amendment of section 11 of article IV of the Constitution of North Dakota, relating to the filling of vacancies in the legislative assembly.

STATEMENT OF INTENT

This amendment would allow the legislative assembly to provide by law the method for filling vacancies in the legislative assembly to replace the requirement that the governor issues writs of election to fill vacancies.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 11 of article IV of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2000, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 11 of article IV of the Constitution of North Dakota is amended and reenacted as follows:

Section 11. The ~~governor shall issue writs of election~~ legislative assembly may provide by law a procedure to fill such vacancies ~~as may occur~~ occurring in either house of the legislative assembly.

Approved June 13, 2000

41,058 to 38,648

NOTE: This was measure No. 4 on the 2000 primary election ballot.

CHAPTER 593**HOUSE CONCURRENT RESOLUTION NO. 3018**

(Representatives Belter, Carlson, Henegar)
(Senators G. Nelson, B. Stenehjem, Traynor)

RIGHT TO HUNT, TRAP, AND FISH

A concurrent resolution to create and enact a new section to article XI of the Constitution of North Dakota, relating to hunting, trapping, and fishing.

STATEMENT OF INTENT

This amendment would provide that hunting, trapping, and fishing are a valued part of residents' heritage and will be preserved for the people and managed by law and regulation for the public good.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed new section to article XI 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 2000, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article XI of the Constitution of North Dakota is created and enacted as follows:

Hunting, trapping, and fishing and the taking of game and fish are a valued part of our heritage and will be forever preserved for the people and managed by law and regulation for the public good.

Approved November 7, 2000

206,443 to 61,531

NOTE: This was measure No. 1 on the 2000 general election ballot.

CONSTITUTIONAL AMENDMENT DISAPPROVED

CHAPTER 594

SENATE CONCURRENT RESOLUTION NO. 4022

(Senators Grindberg, G. Nelson, Schobinger)

(Representatives Clark, Dorso, Grosz)

STATE TREASURER NOT ELECTED

A concurrent resolution for the amendment of section 2 of article V, section 3 of article IX, and section 12 of article X of the Constitution of North Dakota, relating to the office of state treasurer; to repeal section 15 of article XII of the Constitution of North Dakota, relating to the duties of the state treasurer upon the issuance of legal tender by banks in the state; to provide for transition; and to provide an effective date.

STATEMENT OF INTENT

This amendment removes the state treasurer as an elected constitutional officer effective January 1, 2003, and provides that upon approval of this amendment the term of the state treasurer elected in 2000 will be two years. The amendment also repeals a section providing for the duties of the state treasurer on issuance of legal tender by banks in the state.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendments to section 2 of article V, section 3 of article IX, and section 12 of article X of the Constitution of North Dakota, and the repeal of section 15 of article XII of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 2000, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 2 of article V of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance commissioner, three public service commissioners, secretary of state, superintendent of public instruction, and tax commissioner; ~~and treasurer~~. The legislative assembly may by law provide for a department of labor to be administered by a public official who may be either elected or appointed.

The powers and duties of the agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, and tax commissioner; ~~and treasurer~~ must be

prescribed by law. If the legislative assembly establishes a labor department, the powers and duties of the officer administering that department must be prescribed by law.

SECTION 2. AMENDMENT. Section 3 of article IX of the Constitution of North Dakota is amended and reenacted as follows:

Section 3. The superintendent of public instruction, governor, attorney general, secretary of state, and ~~state treasurer~~ agriculture commissioner comprise a board of commissioners, to be denominated the "board of university and school lands". Subject to the provisions of this article and any law that may be passed by the legislative assembly, the board has control of the appraisal, sale, rental, and disposal of all school and university lands, and the proceeds from the sale of such lands shall be invested as provided by law.

SECTION 3. AMENDMENT. Section 12 of article X of the Constitution of North Dakota is amended and reenacted as follows:

Section 12.

1. All public moneys, from whatever source derived, ~~shall~~ must be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the ~~same moneys~~, to the ~~state treasurer~~ proper official as provided by law, and deposited by ~~him~~ the official to the credit of the state, and ~~shall be~~ paid out and disbursed only pursuant to appropriation first made by the ~~legislature~~ legislative assembly; provided, however, that there is hereby appropriated the necessary funds required in the financial transactions of the Bank of North Dakota, and required for the payment of losses, duly approved, payable from the state hail insurance fund, state bonding fund, and state fire and tornado fund, and required for the payment of compensation to injured employees or death claims, duly approved, payable from the ~~workmen's~~ workers' compensation fund, and required for authorized investments made by the board of university and school lands, and required for the financial operations of the state mill and elevator association, and required for the payment of interest and principal of bonds and other fixed obligations of the state, and required for payments required by law to be paid to beneficiaries of the teachers' ~~insurance and fund for retirement fund~~, and required for refunds made under the provisions of the Retail Sales Tax Act, and the State Income Tax Law, and the State Gasoline Tax Law, and the Estate and Succession Tax Law, and the income of any state institution derived from permanent trust funds, and the funds allocated under the law to the ~~state highway~~ department of transportation and the various counties for the construction, reconstruction, and maintenance of public roads.

This constitutional amendment ~~shall~~ does not be construed to apply to fees and moneys received in connection with the licensing and organization of physicians and surgeons, pharmacists, dentists, osteopaths, optometrists, embalmers, barbers, lawyers, veterinarians, nurses, chiropractors, accountants, architects, hairdressers, chiropodists, and other similarly organized, licensed trades and professions; and this constitutional amendment ~~shall not be construed to amend or repeal existing laws or Acts amendatory thereof concerning such fees and moneys.~~

2. No bills, claims, accounts, or demands against the state or any county or other political subdivision ~~shall~~ may be audited, allowed, or paid until a full itemized statement in writing ~~shall be~~ is filed with the officer or officers whose duty it ~~may be~~ is to audit the same, and then only upon warrant drawn upon the treasurer of ~~such~~ the funds by the proper officer or officers.
- ~~3. This amendment shall become effective on July 1, 1939.~~

SECTION 4. REPEAL. Section 15 of article XII of the Constitution of North Dakota is repealed.

SECTION 5. TRANSITION. The term of the state treasurer elected in 2000 is two years.

SECTION 6. EFFECTIVE DATE. If approved by the voters, sections 1 through 4 of this measure become effective on January 1, 2003.

Disapproved June 13, 2000

38,715 to 42,734

NOTE: This was measure No. 3 on the 2000 primary election ballot.

CONSTITUTIONAL AMENDMENTS PROPOSED

CHAPTER 595

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.

Filed April 18, 2001

NOTE: This will be measure No. 1 on the 2002 primary election ballot.

CHAPTER 596

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.

Filed April 2, 2001

NOTE: This will be measure No. 1 on the 2002 general election ballot.

HOUSE CONCURRENT RESOLUTIONS

CHAPTER 597

HOUSE CONCURRENT RESOLUTION NO. 3001

(Legislative Council)
(Agriculture Committee)

CONSISTENT GRAIN GRADING URGED

A concurrent resolution urging Congress to provide for a consistent system of grain grading based upon point-of-origin grain grading.

WHEREAS, the production and sale of grain directly impacts the economic well-being of farmers and country elevators, and indirectly impacts rural communities, the state, and the nation; and

WHEREAS, the efficient marketing of grain depends upon the consistent application of a grain grading system; and

WHEREAS, inconsistencies between the test results of grain that is first graded at country elevators and then graded at destination ports result in country elevators being placed at substantial financial risk; and

WHEREAS, grain grading standards that differ depending on where and to whom they are applied cause mistrust and raise concerns about the quality of American products; and

WHEREAS, the risk management grade should follow the Commodity Credit Corporation's grades for adjustments for crop insurance purposes;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to provide for a consistent system of grain grading based upon point-of-origin grain grading; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of Agriculture and to each member of the North Dakota Congressional Delegation.

Filed April 3, 2001

CHAPTER 598**HOUSE CONCURRENT RESOLUTION NO. 3002**
(Legislative Council)
(Education Services Committee)**TITLE 15 COMPLETED REVISION STUDY**

A concurrent resolution directing the Legislative Council to study the completed revision of those provisions of Title 15 of the North Dakota Century Code which relate to elementary and secondary education for the purpose of reconciling any inconsistencies or irregularities.

WHEREAS, the Legislative Assembly has reviewed and rewritten many of the laws relating to the provision of elementary and secondary education in this state; and

WHEREAS, many of these statutes had been adopted over the years without regard to their interrelationship and many of these statutes were duplicative, inconsistent, or illogically arranged; and

WHEREAS, many of the laws relating to the provision of elementary and secondary education in this state lack both clear objectives and directives for their administration; and

WHEREAS, although the Legislative Council conducted studies during the 1997-98 and 1999-2000 interims which resulted in recommendations for the revision of a substantial portion of Title 15, time did not permit a complete reconciliation of all inconsistencies and irregularities in these laws;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the completed revision of those provisions of Title 15 of the North Dakota Century Code which relate to elementary and secondary education for the purpose of reconciling any inconsistencies or irregularities; 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-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 599**HOUSE CONCURRENT RESOLUTION NO. 3003**

(Legislative Council)
(Legislative Management Committee)

LEGISLATIVE REDISTRICTING STUDY

A concurrent resolution directing the Legislative Council to study and develop a legislative redistricting plan or plans for use in the 2002 primary election.

WHEREAS, the Legislative Assembly has the primary responsibility for legislative redistricting; and

WHEREAS, the demographic data necessary to complete the redistricting task must be based on the 2000 federal decennial census; and

WHEREAS, the results of the 2000 federal decennial census will not be available to the Legislative Assembly in sufficient time to permit the Legislative Assembly to consider a legislative redistricting plan during the regular session of the Fifty-seventh Legislative Assembly;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study legislative redistricting and develop a legislative redistricting plan or plans for use in the 2002 primary election; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to a reconvened or special session of the Fifty-seventh Legislative Assembly.

Filed March 12, 2001

CHAPTER 600**HOUSE CONCURRENT RESOLUTION NO. 3004**

(Legislative Council)
(Taxation Committee)

KYOTO PROTOCOL NONIMPLEMENTATION URGED

A concurrent resolution urging Congress not to implement or allow implementation of the Kyoto Protocol because of the potentially disastrous impact on American agriculture.

WHEREAS, the 1997 Kyoto Protocol treaty on global warming called for reduction in emissions of carbon dioxide and certain other gases to at least seven percent below 1990 levels and application of carbon permit fees to fuel users in industrial countries; and

WHEREAS, the impact of the Kyoto Protocol on United States farmers would be devastating because of forced reliance on fuels and aggravation of the farm crisis from fuel cost increases that would come with implementation of the Kyoto Protocol; and

WHEREAS, federal policy should foster expansion and diversification of and investment in the United States agricultural economy, and these objectives would be impeded by fuel cost increases for United States farmers; and

WHEREAS, it should be possible to develop environmentally responsible policy to reduce greenhouse gas emissions without destroying the livelihood of those who make the United States the greatest food-producing nation in the world;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States not to implement or allow implementation of the Kyoto Protocol because of the potentially disastrous impact on American agriculture; 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 February 5, 2001

CHAPTER 601**HOUSE CONCURRENT RESOLUTION NO. 3005**

(Representative Porter)
(Senator Stenehjem)

TRAFFIC OFFENSE FEES AND DEMERITS STUDY

A concurrent resolution directing the Legislative Council to study the fees and point demerits for traffic offenses.

WHEREAS, the present system for the disposition of traffic offenses was created as the result of a Legislative Council study during the 1971-72 interim and has not been reviewed by the Legislative Council since the following interim; and

WHEREAS, since 1973 numerous individual changes have been made to the fee and point demerit system which have fundamentally altered the original design of the system; and

WHEREAS, the balancing of inequities between fees and demerit points for traffic offenses maintains fairness while maintaining the proper level of deterrence;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the fees and point demerits for traffic offenses; 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-eighth Legislative Assembly.

Filed January 31, 2001

CHAPTER 602**HOUSE CONCURRENT RESOLUTION NO. 3010**

(Representatives Onstad, S. Kelsh, Kroeber)
(Senators Lyson, Wardner)

**PUBLIC HOUSING AUTHORITY PROPERTY TAX
EXEMPTION STUDY**

A concurrent resolution directing the Legislative Council to study the property tax exemption for public housing authorities.

WHEREAS, the property of public housing authorities is exempt from taxation; and

WHEREAS, the tax exemption for property of public housing authorities is based on federal law as well as state statutory and constitutional authority; and

WHEREAS, public housing authorities acquire properties that have previously been on the tax rolls, which erodes the tax base for political subdivisions, particularly school districts; and

WHEREAS, the removal of property from property tax rolls shifts the tax burden to other taxpayers and loss of tax revenues reduces the quality of services provided to all property, including property of public housing authorities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the property tax exemption for public housing authorities; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed March 22, 2001

CHAPTER 603

HOUSE CONCURRENT RESOLUTION NO. 3012

(Representatives Wald, Keiser, Timm)
(Senators Lee, D. Mathern, Urlacher)

INTERNET TAX FREEDOM ACT EXTENSION OPPOSITION URGED

A concurrent resolution urging Congress to reject any attempt to extend the Internet Tax Freedom Act moratorium on imposition of state and local taxes on internet access and on electronic commerce transactions.

WHEREAS, in 1998 the 105th Congress passed and the President signed into law the Internet Tax Freedom Act, establishing a three-year moratorium on the imposition of any state and local tax on internet access, and on electronic commerce transactions, with the exception of existing laws in twelve states that were "grandfathered" into compliance by the Act; and

WHEREAS, the current moratorium expires October 21, 2001; and

WHEREAS, no state attempted or even announced any desire to tax internet access, or apply multiple or discriminatory taxes to the internet during the moratorium; and

WHEREAS, two of the original grandfathered states have by legislative action removed taxes on internet access; and

WHEREAS, several bills and amendments have been introduced in the 106th Congress to either make the moratorium on state and local taxes permanent or extend it for another two to ninety-nine years; and

WHEREAS, extending or making permanent the moratorium will pose grave financial risks for state and local governments as well as telecommunications industry providers; and

WHEREAS, with the increasing convergence of technologies and mergers of industry giants, the present definition of internet access may become inadequate to define exactly which communications technologies will fall into the category of internet access as soon as next year; and

WHEREAS, with the mergers of internet service providers and cable television and telephone companies, internet access may soon mean a consumer's monthly access to the internet includes telephone service and cable television, all of which the provider could bundle for one fee under the banner of internet access; and

WHEREAS, in such situations, state and local governments could see major reductions in revenues as existing state and local taxes on telecommunications services and cable television could fall under the moratorium and therefore be preempted by federal law; and

WHEREAS, the states' inability to collect these taxes will create an unfair competitive advantage for internet service providers at the expense of traditional telecommunications service providers and cable operators;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly joins the National Conference of State Legislatures in urging Congress to reject any attempt to extend the Internet Tax Freedom Act moratorium on imposition of state and local taxes on internet access and on electronic commerce transactions and to oppose any federal action to preempt the sovereign and constitutional right of the states to determine their own tax policies in all areas, including telecommunications and electronic commerce; and

BE IT FURTHER RESOLVED, that a copy of this resolution be delivered to the President of the United States, the chairman of the House Judiciary Committee, the chairman of the Senate Commerce, Science, and Transportation Committee, and to each member of the North Dakota Congressional Delegation.

Filed March 22, 2001

CHAPTER 604**HOUSE CONCURRENT RESOLUTION NO. 3013**

(Representative Kretschmar)

HIGHWAY DESIGNATION STUDY

A concurrent resolution directing the Legislative Council to study the designation of highways in the state highway system and the county road system.

WHEREAS, there are approximately 106,514 miles of roadway in the state of North Dakota, the largest portion of which are township roads at 56,566 miles; and

WHEREAS, the state highway system is limited to 7,456 miles and 7,378 miles are designated as in the system; and

WHEREAS, the county road system is limited to 22,500 miles and 10,145 miles are designated as in the system; and

WHEREAS, adequate funding for highways in this state is essential to the major industry in this state including agriculture and tourism;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the designation of highways in the state highway system and the county road 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-eighth Legislative Assembly.

Filed March 12, 2001

CHAPTER 605**HOUSE CONCURRENT RESOLUTION NO. 3015**
(Representatives Weisz, DeKrey, Nelson)
(Senator Klein)**SEPARATION OF POWERS STUDY**

A concurrent resolution directing the Legislative Council to study the separation of powers between the legislative, executive, and judicial branches and the distinction between the responsibilities of each branch.

WHEREAS, Section 26 of Article XI of the Constitution of North Dakota provides that the legislative, executive, and judicial branches are co-equal branches of government; and

WHEREAS, with the exception of the power of the people to propose and enact laws by the initiative, the sole legislative power of the state is vested in the Legislative Assembly, the judicial power of the state is vested in the courts, and the the administrative power of the state is vested in the executive branch; and

WHEREAS, the thoughtful and prudent exercise of these powers by each of these separate and coequal branches, with due respect and consideration for authority and responsibility of the other, is in the best interest of the people;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the separation of powers between the legislative, executive, and judicial branches and the distinction between the responsibilities of each branch; 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-eighth Legislative Assembly.

Filed April 9, 2001

CHAPTER 606**HOUSE CONCURRENT RESOLUTION NO. 3016**

(Representatives Kempenich, Brandenburg, Lemieux)
(Senators Tollefson, Urlacher)

GRAIN GRADING EQUIVALENCY URGED

A concurrent resolution urging Congress to make grain grading for federal crop insurance more equivalent to industry standards.

WHEREAS, federal crop insurance is purchased as a risk management tool;
and

WHEREAS, federal crop insurance does not adequately address the risks present in the production of wheat; and

WHEREAS, the industry uses stricter standards in discounting wheat to feed prices than those used for payment of federal crop insurance; and

WHEREAS, the industry deeply discounts or purchases at feed prices based upon many other factors besides the limited factors used for federal crop insurance;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to make grain grading for federal crop insurance more equivalent to industry standards; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Federal Crop Insurance Corporation, the Secretary of the Department of Agriculture, and to each member of the North Dakota Congressional Delegation.

Filed April 9, 2001

CHAPTER 607**HOUSE CONCURRENT RESOLUTION NO. 3017**

(Representatives Carlisle, DeKrey, Mahoney)
(Senators C. Nelson, Traynor, Urlacher)

**INDIGENT DEFENSE AND PUBLIC DEFENDER
SYSTEM STUDY**

A concurrent resolution directing the Legislative Council to study the method of providing legal representation for indigent criminal defendants and the feasibility and desirability of establishing a public defender system.

WHEREAS, the Legislative Assembly last considered the establishment of a different method of providing indigent defense services during the forty-third and forty-fourth legislative assemblies and the dynamics and requirements of providing these services have changed considerably since that time; and

WHEREAS, in response to litigation or increasing costs, other states have found it necessary to conduct studies or enact laws to address issues regarding the effective provision of legal representation for indigent criminal defendants; and

WHEREAS, costs associated with the indigent defense contract system administered by the North Dakota judicial branch continue to increase in greater proportion than most other costs of the judicial branch; and

WHEREAS, the current indigent defense contract system poses troubling, conflict-related issues concerning judge involvement in deciding when criminal defense expenses, such as expert witnesses, should be allowed while also presiding in cases involving indigent criminal defendants;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the method of providing legal representation for indigent criminal defendants 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-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 608

HOUSE CONCURRENT RESOLUTION NO. 3020

(Representatives Kasper, Byerly, Wald)
(Senators Christmann, Espegard, Fischer)

LAKE SAKAKAWEA PRIVATE ACCESS AND DEVELOPMENT URGED

A concurrent resolution urging the United States Army Corps of Engineers to promote private access to, private ownership of, and private development on lands it owns and manages around Lake Sakakawea, including the return of lakeshore lands that are contiguous to current tribal-owned land to the Three Affiliated Tribes and development and implementation of a water level policy that establishes and assures that Lake Sakakawea will have a stable water level.

WHEREAS, the Pick-Sloan Project, as authorized by the Flood Control Act of 1944, as amended, provides major flood control benefits, recreational benefits, water supply benefits, hydropower benefits, and navigational benefits for the downstream states of Iowa, Nebraska, Missouri, and Kansas through construction of large reservoirs in states lying upstream from these states; and

WHEREAS, the Pick-Sloan Project reservoirs have been in place for many years, thus providing the states downstream from the Missouri River Basin all the benefits promised in the Pick-Sloan Project; and

WHEREAS, construction of facilities under the Pick-Sloan Project has, to date, resulted in over \$16.7 billion of flood protection to downstream interests and has allowed these downstream interests to develop the original floodplain of the Missouri River for industrial, municipal, and agricultural uses; and

WHEREAS, under the Pick-Sloan Project, North Dakota sacrificed over 550,000 acres of land which has meant the permanent loss of 2,641 jobs, \$45 million of annual personal income, and \$131 million of annual gross business volume; and

WHEREAS, most of the land surrounding Lake Sakakawea, which was created by Garrison Dam, is owned by the federal government and managed by the United States Army Corps of Engineers; and

WHEREAS, promoting private access and private development of this land would enhance this resource for the citizens of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the United States Army Corps of Engineers to promote private access to, private ownership of, and private development on lands it owns and manages around Lake Sakakawea, including the return of lakeshore lands that are contiguous to current tribal-owned land to the Three Affiliated Tribes and development and implementation of a water level policy

that establishes and assures that Lake Sakakawea will have a stable water level;
and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the Army; the Secretary of the Interior; the Division Engineer, Northwestern Division, United States Army Corps of Engineers; 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 Congressional Delegation.

Filed March 22, 2001

CHAPTER 609**HOUSE CONCURRENT RESOLUTION NO. 3021**

(Representatives Kasper, B. Thoreson, Wald)
(Senators Espegard, Fischer, Robinson)

DAKOTA WATER RESOURCES ACT FUNDING URGED

A concurrent resolution expressing appreciation for passage of the Dakota Water Resources Act and urging Congress to fully fund the federal share of the water projects in that Act.

WHEREAS, North Dakota and its Indian tribes lost more than 500,000 acres of valuable river bottom lands 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 activity as well as other serious impacts to individuals, political subdivisions, and the state's Indian Nations; and

WHEREAS, operation of the Pick-Sloan Missouri River dams has caused extensive damage and erosion to the remaining riverbanks and sediment buildup in areas of the upper reaches of the Oahe and Garrison reservoirs; and

WHEREAS, North Dakota was assured by Congress in the federal Flood Control Act of 1944 that the loss of this valuable land and economic return would be offset by completion of the Garrison Diversion Unit; and

WHEREAS, project beneficiaries have not realized the promise of the Garrison Diversion Unit; and

WHEREAS, construction of the Garrison Diversion Unit has been delayed numerous times with construction costs increasing and the remaining benefits deferred with each delay; and

WHEREAS, primary sources of water for many communities across North Dakota, including on its Indian reservations, are unsafe and of poor quality and a safe, reliable supply of water is necessary to preserve and improve the quality of life in rural North Dakota, and projects such as the Southwest Water Pipeline Project, the Northwest Area Water Supply Project, and other systems now being developed are needed to meet water supply needs; and

WHEREAS, failure to provide long-term water supply and management across North Dakota will jeopardize future economic opportunities dependent on water, including industry, agricultural processing, manufacturing, municipal growth, recreation, and fish and wildlife, and that failure will adversely affect the entire state; 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 the economic stability and quality of life for the growing population of the Red River Basin; and

WHEREAS, the Dakota Water Resources Act proposes an objective analysis of the best ways to meet those needs and authorizes federal funding to implement the solution; and

WHEREAS, the Dakota Water Resources Act provides immediate funding authority for the Native American and rural areas of the state through the existing municipal, rural, and industrial grant program; and

WHEREAS, under the Dakota Water Resources Act, the state of North Dakota will be required to provide cost share or repayment and operation and maintenance expenses for delivery of water to the Red River Valley;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly expresses appreciation for passage of the Dakota Water Resources Act and urges the Congress of the United States to fully fund the federal share of the water projects in that Act; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, the Secretary of the Interior, the chairman of the Three Affiliated Tribes, the chairman of the Standing Rock Sioux Tribe, and each member of the North Dakota Congressional Delegation.

Filed March 22, 2001

CHAPTER 610

HOUSE CONCURRENT RESOLUTION NO. 3022

(Representatives Drovdal, Hanson, Porter)
(Senators Lyson, Wardner)

ELK RETENTION STUDY

A concurrent resolution directing the Legislative Council to study the use of incentive programs in North Dakota as a way of keeping elk in the state and providing increased opportunities for landowners, hunters, and the general public.

WHEREAS, on at least two separate occasions within the last ten years, "surplus" elk have been exported from the state of North Dakota; and

WHEREAS, under current elk management regulations, the vast majority of the people of North Dakota have only a once-in-a-lifetime chance of getting a permit to hunt elk within the state; and

WHEREAS, the strong demand for elk permits was clearly evident in the year 2000 when there were 11,951 applications received by the Game and Fish Department and only 204 permits made available; and

WHEREAS, exportation of elk from the state denies our residents the future opportunity to hunt, observe, and otherwise benefit from these majestic animals; and

WHEREAS, the elk population of the South Unit of Theodore Roosevelt National Park periodically exceeds acceptable carrying capacity based upon National Park Service guidelines, thus forcing a determination of where to translocate "surplus" animals; and

WHEREAS, there are tens of thousands of acres of public land in North Dakota with suitable habitat to which "surplus" elk could be translocated; and

WHEREAS, there exists a memorandum of understanding between the National Park Service, the Game and Fish Department, and other agencies that gives the Game and Fish Department the first option to accept management of said "surplus" elk; and

WHEREAS, there are a number of states that have designed and implemented custom-tailored programs with incentives to facilitate acceptable solutions to wildlife management issues such as the "surplus" elk issue in North Dakota; and

WHEREAS, the people of North Dakota strongly value their hunting heritage, as evidenced by an overwhelming 80 percent approval of the recent amendment to the Constitution of North Dakota related to that heritage;

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 incentive programs implemented in other states that would allow the retention of "surplus" elk and also benefit other wildlife species, incentive programs to enhance landowner tolerance of wildlife and to provide economic benefit opportunities to landowners while increasing access to private land for public hunting, effectiveness of incentive programs to foster a spirit of cooperation between landowners, sportsmen, and regulatory agencies in collaborative wildlife management efforts, and disease concerns associated with the translocation of free ranging wildlife; 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-eighth Legislative Assembly.

Filed March 22, 2001

CHAPTER 611

HOUSE CONCURRENT RESOLUTION NO. 3023

(Representatives Kerzman, Kretschmar)
(Senator Wardner)

AGRICULTURAL EASEMENTS STUDY

A concurrent resolution directing the Legislative Council to study the use of easements to protect agricultural and other lands in North Dakota.

WHEREAS, North Dakota is among the nation's most rural and agricultural states with a proud heritage of being part of the "Breadbasket of the nation and the entire world"; and

WHEREAS, more than 88 percent of the state's lands are in private ownership and the state's agrarian history places a high value on the rights of private property owners to make their own decisions concerning their property; and

WHEREAS, farmland and rangeland provide the basis for our state's agriculture and a wide array of cereal grains, vegetables, domestic animals, wildlife, other commodities, recreational experiences, and opportunities; and

WHEREAS, these farmlands and rangelands are limited and there are increasing pressures on the state's privately owned land for commercial use, recreational use, urban expansion, including subdivision and business development, conservation, recreational home development, and other purposes; and

WHEREAS, these growing nonagricultural uses in some areas of the state are increasing land values beyond what a new generation of farmers and ranchers can afford; and

WHEREAS, agricultural uses and recreational values of land around the state's major cities and in unique areas such as the Badlands, the Missouri River corridor, and the Sheyenne River Valley are potentially threatened by development pressures; and

WHEREAS, interpretation of certain types of easements have resulted in the loss of management authority for landowners; and

WHEREAS, there is a concern that perpetual easements will handicap future generations in their management decisions; and

WHEREAS, in 1982, the National Conference of Commissioners on Uniform State Laws developed a uniform act that authorizes the use of easements to deal with the issues of protecting agricultural, recreational, cultural, scenic, and other values of land, and nearly all of the fifty states, except North Dakota, have enacted some form of this proposed legislation; and

WHEREAS, easements have offered a number of states a new system for dealing with managing serious flood and water management issues such as those that exist in the Red River Valley of eastern 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 use of easements to protect agricultural and other lands, the effectiveness of easements in assisting landowners in their decisionmaking related to the future of their property, and the experience of other state, regional, and national efforts to protect agricultural and other lands including cropland, rangeland, forested lands, wetlands, riparian land, and cultural and scenic 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-eighth Legislative Assembly.

Filed March 22, 2001

CHAPTER 612

HOUSE CONCURRENT RESOLUTION NO. 3024

(Representatives Koppang, Grumbo, Hawken, Skarphol)
(Senators Freborg, O'Connell)

CHILDREN WITH DISABILITIES EDUCATION FUNDING INCREASE URGED

A concurrent resolution urging Congress to raise the level of federal funding for the education of children with disabilities.

WHEREAS, Congress has enacted legislation to ensure that all children with disabilities have available to them a free appropriate public education, to protect the rights of children with disabilities and their parents or guardians, to assist states and localities in providing for the education of all children with disabilities, and to assess and ensure the effectiveness of efforts to educate children with disabilities; and

WHEREAS, although Congress has declared that state and local education agencies have a responsibility to provide education for all children with disabilities, state and local financial resources are inadequate to meet the special education needs of children with disabilities; and

WHEREAS, on November 19, 1975, Congress enacted the Education For All Handicapped Children Act, which, after being amended in 1991, is known as the Individuals With Disabilities Education Act; and

WHEREAS, Congress included a graduated formula for determining state entitlement and provided that for the fiscal year ending September 30, 1982, and for each fiscal year thereafter, the federal funding level was to be set at 40 percent of the average per student expenditure in public elementary and secondary schools in the United States; and

WHEREAS, the most recent level of federal funding received by this state for the education of children with disabilities is one-third of the 40 percent target level set by Congress; and

WHEREAS, the Legislative Assembly of North Dakota supports the goal of providing full educational opportunity to all children with disabilities and recognizes that in meeting this goal, many school districts in the state incur financial hardships; and

WHEREAS, budget surpluses in recent years could be used to raise the level of federal funding for special education;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to raise the level of federal funding for the education of children with disabilities; 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 Department of Education, to the chairman of the Senate Labor and Human Resources Committee, to the chairman of the House Economic and Educational Opportunities Committee, and to each member of the North Dakota Congressional Delegation.

Filed March 22, 2001

CHAPTER 613**HOUSE CONCURRENT RESOLUTION NO. 3026**

(Representatives Ekstrom, Boucher, Gulleson, S. Kelsh, Mueller)
(Senator Krauter)

WIND ENERGY DEVELOPMENT STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of wind energy development in North Dakota.

WHEREAS, wind power is a renewable and nonpolluting source of energy;
and

WHEREAS, several studies have concluded that North Dakota has the greatest potential for wind energy development in the United States; and

WHEREAS, wind energy projects could provide North Dakota agricultural producers with an additional source of income from wind generation without interfering with their agricultural operations; and

WHEREAS, wind energy projects may increase general economic activity in the state including construction of wind energy projects, landowner income, creation of long-term jobs from constructing and servicing wind generation facilities and the manufacturing of wind turbine components; and

WHEREAS, the use of public lands should be studied to determine whether these lands may be used for wind energy projects; and

WHEREAS, transmission constraints may exist that would hinder the export of electricity generated from wind turbines located 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 wind energy development 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-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 614**HOUSE CONCURRENT RESOLUTION NO. 3027**

(Representatives Schmidt, Boucher, Nicholas)
(Senators Tomac, Wanzek, Wardner)

**INTERNATIONAL TRADE INEQUITIES CORRECTION
URGED**

A concurrent resolution urging Congress to correct the inequities of international trade policy.

WHEREAS, a variety of international trade policies have inequitable impacts on citizens of North Dakota, including the North American Free Trade Agreement, the General Agreement on Tariffs and Trade, and Environmental Protection Agency rules; and

WHEREAS, the breadth of the areas impacted by international trade policies is immense and includes access to prescription drugs, availability and use of agricultural chemicals, access to medical and dental services, agricultural commodity markets, and availability of construction materials; and

WHEREAS, correction of these inequities of international trade policies need not harm the citizens of our neighboring countries; and

WHEREAS, although the problems related to inequitable international trade policies are felt by citizens across the nation, these problems are more acutely felt by citizens of border states such as North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges Congress to correct the inequities of international trade policy; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States, the United States Trade Representative, Director-General of the World Trade Organization, the Administrator of the United States Environmental Protection Agency, the Secretary of the United States Department of Agriculture, the Secretary of the United States Commerce Department, and to each member of the North Dakota Congressional Delegation.

Filed April 9, 2001

CHAPTER 615**HOUSE CONCURRENT RESOLUTION NO. 3029**

(Representatives Wentz, Carlisle, Timm, Wrangham)
(Senators Bercier, Schobinger)

**VETERANS OF FOREIGN WARS MEMORIAL
HIGHWAY DESIGNATED**

A concurrent resolution designating United States Highway 83 through the state of North Dakota as the "Veterans of Foreign Wars Memorial Highway".

WHEREAS, United States Highway 83 extends from the Mexican border at Brownsville, Texas, to the Canadian border near Westhope, North Dakota, across the states of Texas, Oklahoma, Kansas, Nebraska, South Dakota, and North Dakota; and

WHEREAS, many veterans have fought bravely and courageously in foreign wars for which the residents of this state owe a debt of gratitude; and

WHEREAS, Nebraska has designated United States Highway 83 through that state as the "Veterans of Foreign Wars Memorial Highway"; and

WHEREAS, North Dakota can join Nebraska and lead the way in honoring the sacrifice of veterans of foreign wars; and

WHEREAS, the six states in the nation's mid-section through which United States Highway 83 runs may consider the designation "Veterans of Foreign Wars Memorial Highway";

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That in honor of the veterans of foreign wars, United States Highway 83 through the state of North Dakota is designated as the "Veterans of Foreign Wars Memorial Highway".

Filed March 22, 2001

CHAPTER 616**HOUSE CONCURRENT RESOLUTION NO. 3030**

(Representatives Porter, Berg, Drovdal, Galvin, Pollert, Severson)

**MEDICARE REIMBURSEMENT INCREASE AND RATE
EQUALIZATION URGED**

A concurrent resolution urging Congress to increase Medicare reimbursement for health care providers, to use an appropriate amount of the federal budget surplus to equalize Medicare rates within North Dakota and within the nation, and to delay implementation of the proposed 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, Congress is proposing implementation of a Medicare 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-seventh 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 surplus to equalize Medicare rates within North Dakota and within the nation, and to delay implementation of the proposed Medicare ambulance reimbursement fee schedule; and

BE IT FURTHER RESOLVED, that the Fifty-seventh 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, to the chairman of the United States Senate Finance Committee, to 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 29, 2001

CHAPTER 617**HOUSE CONCURRENT RESOLUTION NO. 3031**

(Representatives Carlson, Grande, Koppelman, Wald)

**TAX LEVY OR INCREASE PROHIBITION
AMENDMENT URGED**

A concurrent resolution making application to Congress to submit to the states an amendment to the Constitution of the United States to prohibit the United States Supreme Court and any federal court from ordering a state or political subdivision to levy or increase taxes.

WHEREAS, the Constitution of the United States reserves to the states a broad range of powers and the power of the federal government is strictly limited with regard to powers reserved to the states; and

WHEREAS, under the Constitution of the United States, the states are given full authority over state and local government tax policy; and

WHEREAS, it is the duty of the judiciary to interpret the law, not to create law; and

WHEREAS, our present federal government has strayed from the intent of our founding fathers and the Constitution of the United States through inappropriate federal mandates; and

WHEREAS, federal district courts, with the acquiescence of the United States Supreme Court, continue to order states to levy or increase taxes to comply with federal mandates; and

WHEREAS, these court actions violate the Constitution of the United States; and

WHEREAS, the time has come for the people of this great nation and their duly elected representatives in state government to reaffirm, in no uncertain terms, that the authority to tax under the Constitution of the United States is retained by the people who, by their consent alone, do delegate such power to tax explicitly to those duly elected representatives in the legislative branch of government whom they choose, such representatives being directly responsible and accountable to those who have elected them;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

1. That the United States Congress prepare and submit to the several states an amendment to the Constitution of the United States to add a new article providing as follows:

"Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or political

subdivision thereof, or an official of such a state or political subdivision, to levy or increase taxes."

2. That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States.
3. That the Fifty-seventh Legislative Assembly also proposes that the legislatures of each of the several states comprising the United States that have not yet made a similar request apply to the United States Congress requesting enactment of an appropriate amendment to the Constitution of the United States, and apply to the United States Congress to propose such an amendment to the Constitution of the United States.
4. That the Secretary of State transmit copies of this resolution to the President and Vice President of the United States, the presiding officer in each house of the legislature in each of the states in the Union, the Speaker of the United States House of Representatives, the President of the United States Senate, and to each member of the North Dakota Congressional Delegation.

Filed March 22, 2001

CHAPTER 618

HOUSE CONCURRENT RESOLUTION NO. 3033

(Representatives Monson, Huether, D. Johnson, R. Kelsch, Lemieux, Nelson)

INDUSTRIAL HEMP PRODUCTION AUTHORIZATION URGED

A concurrent resolution urging Congress to acknowledge the difference between marijuana and industrial hemp; to acknowledge that allowing and encouraging farmers to produce industrial hemp will improve the balance of trade by promoting domestic sources of industrial hemp; and to assist United States producers by clearly authorizing the commercial production of industrial hemp and by being the leading advocate for the industrial hemp industry.

WHEREAS, industrial hemp refers to varieties of the cannabis plant which have a low content of tetrahydrocannabinol (THC) and which are cultivated for fiber and oil; and

WHEREAS, industrial hemp should not be confused with varieties of cannabis which have a high content of tetrahydrocannabinol (THC) and which are commonly referred to as marijuana; and

WHEREAS, the commercial production and cultivation of industrial hemp is now permitted in Canada, under licenses and authorizations issued by Health Canada; and

WHEREAS, Health Canada controls, through rules, all activities relating to the importation, exportation, possession, production, sale, provision, transport, sending, delivering, and offering for sale of industrial hemp; and

WHEREAS, industrial hemp is grown legally throughout Europe and Asia; and

WHEREAS, many farmers facing uncertain times in the agricultural marketplace view the reintroduction of industrial hemp as another potential alternative crop that will have long-term economic benefits to the farmers who produce the hemp and the persons who utilize hemp in the production of textiles, paper products, concrete reinforcement, automobile parts, plastics, cosmetics, organic foods, and natural body products; and

WHEREAS, Congress never originally intended to prohibit the production of industrial hemp when restricting the production, possession, and use of marijuana;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to acknowledge the difference between marijuana and industrial hemp; to acknowledge that allowing and encouraging farmers to produce industrial hemp will improve the balance of trade by promoting domestic sources of industrial hemp; and

to assist United States producers by clearly authorizing the commercial production of industrial hemp and by being the leading advocate for the industrial hemp industry; 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 Agriculture, the administrator of the United States Department of Justice Drug Enforcement Administration, the director of the Office of the National Drug Control Policy, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed April 3, 2001

CHAPTER 619**HOUSE CONCURRENT RESOLUTION NO. 3034**

(Representative Boucher)
(Senator Cook)

**DISABILITY AND SUPPLEMENTAL SECURITY
INSURANCE OFFSET ELIMINATION URGED**

A concurrent resolution urging Congress to eliminate the Social Security disability insurance offset and supplemental security insurance offset for recipients of workers' compensation permanent partial impairment benefits.

WHEREAS, employees who are injured and dependents of employees who are killed in the course of working for North Dakota employers receive workers' compensation benefits; and

WHEREAS, more than 700 employees or dependents who receive workers' compensation benefits also qualify for Social Security disability insurance benefits if the employees are totally disabled and supplemental security insurance benefits based on financial need; and

WHEREAS, federal law [42 U.S.C. 424a] provides for a reduction in Social Security disability insurance benefits to those persons who are totally disabled and who receive workers' compensation benefits; and

WHEREAS, federal law [42 U.S.C. 1382a] provides for a reduction in supplemental security insurance benefits to those persons who receive workers' compensation benefits notwithstanding the financial need of those people and their families; and

WHEREAS, an employee injured on the job may receive a permanent partial impairment benefit from the North Dakota Workers Compensation Bureau based on the injured worker's loss of use of a body part due to the work injury; and

WHEREAS, unlike other states, a permanent partial impairment award in North Dakota is not based on wages lost or on the worker's ability to do his or her job; and

WHEREAS, the Social Security Administration also offsets North Dakota workers' compensation permanent partial impairment awards against social security disability payments even though the permanent partial impairment awards are not disability benefits; and

WHEREAS, the offset of permanent partial impairment awards results in a substantial loss of benefits to the injured worker;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to eliminate the Social Security disability insurance offset and supplemental

security insurance offset for recipients of workers' compensation permanent partial impairment benefits; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Commissioner of the Social Security Administration and to each member of the North Dakota Congressional Delegation.

Filed April 3, 2001

CHAPTER 620**HOUSE CONCURRENT RESOLUTION NO. 3035**

(Representatives Fairfield, Boehm, Kerzman, Lemieux)
(Senators Bowman, Tomac)

**MEATPACKER LIVESTOCK CONTROL PROHIBITION
URGED**

A concurrent resolution urging Congress to support efforts to prohibit meatpackers from owning, feeding, or controlling livestock for more than 14 days before slaughter and to amend the federal Packers and Stockyards Act to accomplish this goal.

WHEREAS, the top four firms in steer and heifer slaughter control over 80 percent of the market;

WHEREAS, this market share evidences more than double the concentration of economic power these entities had just 15 years ago;

WHEREAS, when four packing firms have such a large share of the market, their individual procurement decisions and practices affect the prices paid to producers;

WHEREAS, research strongly suggests that significantly depressed market prices have accompanied increases in concentration in regional livestock markets; and

WHEREAS, competitive, fair, and open livestock markets are fundamental to the economic survival of family farms;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to support efforts to prohibit meatpackers from owning, feeding, or controlling livestock for more than 14 days before slaughter and to amend the federal Packers and Stockyards Act to accomplish this goal; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, the chairman of the House Committee on Agriculture, the chairman of the Senate Committee on Agriculture, Nutrition, and Forestry, and to each member of the North Dakota Congressional Delegation.

Filed April 9, 2001

CHAPTER 621**HOUSE CONCURRENT RESOLUTION NO. 3036**

(Representatives B. Thoreson, Clark, Kasper, Weiler)
(Senator Robinson)

AARON RASH CRIME LAB DESIGNATED

A concurrent resolution designating the state crime laboratory building as the "Aaron Rash Crime Lab".

WHEREAS, Aaron Rash served the state of North Dakota and its people honorably as chief chemist at the state crime laboratory from 1961 until 1998 and as state toxicologist from 1998 until his retirement in August 2000; and

WHEREAS, the talents of Aaron Rash were invaluable to law enforcement in this state; and

WHEREAS, designating the state crime laboratory building as the "Aaron Rash Crime Lab" would be an appropriate expression of the appreciation of the people of North Dakota for the dedicated service of Aaron Rash;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That in honor of Aaron Rash's 39 years of dedicated service to the state of North Dakota and its people, the state crime laboratory building is hereby designated as the "Aaron Rash Crime Lab"; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to Aaron Rash and to the State Health Officer.

Filed April 3, 2001

CHAPTER 622**HOUSE CONCURRENT RESOLUTION NO. 3037**

(Representatives Mahoney, Onstad, Wikenheiser)
(Senators Tomac, Urlacher, Wardner)

**CULTURAL OR PALEONTOLOGICAL RESOURCE
ROAD IMPACT STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of creating cost-sharing or funding mechanisms for the unexpected discovery of cultural or paleontological resources within local road projects.

WHEREAS, the unexpected discovery of cultural or paleontological resources after a local road project has begun can create an enormous fiscal burden on the local road authority; and

WHEREAS, the local road authority has almost no control over the extent of investigation that results and has few options except termination or redesign of the project upon discovery of unexpected cultural or paleontological resources; and

WHEREAS, a cost-sharing or funding mechanism including appropriate state agencies and the local road authority would diffuse the risk of unexpectedly discovering cultural or paleontological resources;

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 creating cost-sharing or funding mechanisms for the unexpected discovery of cultural or paleontological resources within local road projects; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed March 29, 2001

CHAPTER 623**HOUSE CONCURRENT RESOLUTION NO. 3039**

(Representatives Disrud, Wikenheiser)
(Senator Urlacher)

ELECTION LAW STUDY

A concurrent resolution to encourage the Secretary of State to appoint a committee to conduct a comprehensive study of North Dakota election laws.

WHEREAS, it has been at least 10 years since the last comprehensive study of election laws in this state; and

WHEREAS, the presidential controversy debacle in Florida illustrates the need for regular comprehensive reviews of election laws and procedures; and

WHEREAS, rapidly evolving election technologies are paving the way for dramatic changes in voting and election procedures; and

WHEREAS, the Secretary of State, in his role as the state's chief election officer, is the individual best suited to undertake a comprehensive study of election laws in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Assembly encourages the Secretary of State to appoint a committee to conduct a comprehensive study of North Dakota election laws; and

BE IT FURTHER RESOLVED, that if the Secretary of State appoints such a committee, the committee should include representation from cities, counties, townships, school districts, political parties, voter advocacy groups, disability groups, and the technology sector; and

BE IT FURTHER RESOLVED, that if the Secretary of State appoints such a committee, the Legislative Council be authorized to appoint up to four members of the Legislative Assembly to the committee, with members from the majority and minority parties and from the House of Representatives and the Senate; and

BE IT FURTHER RESOLVED, that if the Secretary of State appoints such a committee, the committee conclude its deliberations so that the Secretary of State may recommend any necessary statutory changes to the Fifty-eighth Legislative Assembly.

Filed April 9, 2001

CHAPTER 624**HOUSE CONCURRENT RESOLUTION NO. 3042**

(Representatives Lemieux, Brandenburg, D. Johnson)

**CANADIAN CROP PROTECTION PRODUCT USE
AUTHORIZATION URGED**

A concurrent resolution urging Congress to ensure the economic viability and competitiveness of American farmers by adopting legislation that would grant states the authority to issue state registrations to parties who wish to import Canadian crop protection products that are identical or substantially similar to products registered with the Environmental Protection Agency for use in the United States.

WHEREAS, agriculture plays an important role in the economic viability and culture of the state of North Dakota; and

WHEREAS, crop protection products are used to produce high-quality and safe commodities marketed nationally and internationally; and

WHEREAS, farmers in this state use crop protection products in a safe and responsible manner; and

WHEREAS, farmers need access to crop protection products as those available to Canadian producers to be competitive and economically viable; and

WHEREAS, North Dakota farmers are prohibited by federal law and regulations to import and use Canadian crop protection products without the consent of the product registrant;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to adopt legislation granting states the authority to issue state registrations to parties who wish to import Canadian crop protection products that are identical or substantially similar to products registered with the Environmental Protection Agency for use in the United States; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed April 9, 2001

CHAPTER 625**HOUSE CONCURRENT RESOLUTION NO. 3043**

(Representative Keiser)

FISCAL NOTE PROCESS STUDY

A concurrent resolution directing the Legislative Council to study the fiscal note process.

WHEREAS, legislative rules require fiscal notes to be attached to measures that have a potential impact on revenues or expenditures of the state, cities, counties, and school districts; and

WHEREAS, a fiscal note is requested of a state agency determined to be in the best position to estimate the impact of proposed legislation; and

WHEREAS, it is essential to decisions of the Legislative Assembly to be able to rely upon accurate and unbiased preparation of fiscal notes; and

WHEREAS, careful examination of past fiscal notes should be undertaken to determine whether fiscal notes are accurate and unbiased and whether improvements could be made in the process or reliability of fiscal notes for the benefit of the legislative process;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the fiscal note process; and

BE IT FURTHER RESOLVED, that in conducting this study, the Legislative Council may use the services of the State Auditor in auditing from a financial and performance-based standpoint a representative sampling of fiscal notes that have been prepared on recent legislation; 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-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 626**HOUSE CONCURRENT RESOLUTION NO. 3044**

(Representatives Sandvig, Carlson, B. Thoreson)
(Senators Krauter, T. Mathern, O'Connell)

**PUTATIVE FATHERS' ADOPTION REGISTRY
ESTABLISHMENT STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a putative fathers' adoption registry.

WHEREAS, a "putative father" is a man who may be a child's father, but who was not married to the child's mother before the child was born and has not established the fact that he is the father in a court proceeding; and

WHEREAS, in most cases, North Dakota law requires that both parents give consent to an adoption; and

WHEREAS, a putative fathers' adoption registry could serve to protect the legal rights of the father as well as simplify the process for families that want to adopt and for adoption social workers and other professionals who must make sure that a child is "legally free" for adoption; and

WHEREAS, a number of states, including Alabama, Arizona, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, and New Mexico have enacted legislation to create a putative fathers' adoption registry;

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 putative fathers' adoption registry; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 627**HOUSE CONCURRENT RESOLUTION NO. 3047**

(Representatives Herbel, Kingsbury)

**AGRICULTURAL PROPERTY ASSESSMENT AND
VALUATION STUDY**

A concurrent resolution directing the Legislative Council to study the property tax assessment and valuation of agricultural property.

WHEREAS, since 1981 agricultural property in the state has been assessed for property tax purposes pursuant to a statutory formula intended to determine its agricultural productivity; and

WHEREAS, the valuation method for agricultural property was intended to be based in large part upon detailed soils surveys, which have not been completed; and

WHEREAS, the validity of agricultural property assessments under the productivity formula is increasingly being questioned by farmers whose incomes and property market values have declined while property tax valuations have increased; and

WHEREAS, fluctuations in agricultural property assessments have not been uniform across the state and thorough examination is needed to determine whether the productivity formula results in appropriate valuations of agricultural property for property tax purposes;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the property tax assessment and valuation of agricultural property; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed March 22, 2001

CHAPTER 628**HOUSE CONCURRENT RESOLUTION NO. 3048**

(Representatives Sandvig, Disrud, Wentz)
(Senators Christenson, D. Mathern, Watne)

DIVISION OF WOMEN'S HEALTH CREATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of creating a State Department of Health Division of Women's Health and an Advisory Committee on Women's Health.

WHEREAS, certain health issues are unique to women, such as certain reproductive issues, menopause, and postmenopausal phases of a woman's life and certain diseases significantly affect women, such as heart disease, cancer, and osteoporosis; and

WHEREAS, studies indicate early diagnosis and treatment of health issues are beneficial to successful treatment and are related to decreased long-term treatment cost; and

WHEREAS, in 1999 the general assembly of the state of Indiana enacted legislation creating an office of women's health and advisory committee on women's health;

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 creating a State Department of Health Division of Women's Health and an Advisory Committee on Women's Health; 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-eighth Legislative Assembly.

Filed April 9, 2001

CHAPTER 629**HOUSE CONCURRENT RESOLUTION NO. 3050**

(Representatives Sandvig, Devlin, Weisz)
(Senators Fischer, Kilzer, Thane)

**DEPARTMENT OF HUMAN SERVICES
ORGANIZATION STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of realigning the divisions within the Department of Human Services or moving some divisions or functions to the Department of Health or other state agencies.

WHEREAS, the budget for the department of human services is in excess of \$1.3 billion; and

WHEREAS, the current organization of the department can be confusing and intimidating for those in need of services, especially the elderly and the disabled; and

WHEREAS, the elderly, the disabled, and other clients of the Department of Human Services may be better served through restructuring; and

WHEREAS, a study of realigning divisions and restructuring the Department of Human Services may lead to more effective and cost-efficient ways of providing services;

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 realigning the divisions within the Department of Human Services or moving some divisions or functions to the Department of Health or other state agencies; 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-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 630**HOUSE CONCURRENT RESOLUTION NO. 3052**

(Representatives Hawken, Hanson, R. Kelsch)
(Senators Cook, Solberg)

SCHOOL DISTRICT TRANSPORTATION STUDY

A concurrent resolution directing the Legislative Council to study issues of safety, efficiency, and cost-effectiveness with respect to school district transportation.

WHEREAS, both urban and rural school districts are faced with issues regarding the transportation of students; and

WHEREAS, it is anticipated that approximately \$36 million will be expended by the state as transportation reimbursement to school districts during the 2001-03 biennium; and

WHEREAS, school districts expend local funds as well as moneys provided by the state for expenditures incurred in the transportation of students; and

WHEREAS, it is in the best interests of the students, the school districts, and the taxpayers of this state that transportation of students be safe, efficient, and cost-effective;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study issues of safety, efficiency, and cost-effectiveness with respect to school district 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-eighth Legislative Assembly.

Filed March 22, 2001

CHAPTER 631

HOUSE CONCURRENT RESOLUTION NO. 3054

(Representatives Devlin, Price, Severson, Weisz)
(Senators Fischer, Lee)

PARENTAL RESPONSIBILITY AND PARENTING TIME TERM USE STUDY

A concurrent resolution directing the Legislative Council to study the impact on domestic relations law of using the term "parental responsibility" in lieu of "custody" and "parenting time" in lieu of "visitation".

WHEREAS, more than half of all civil actions filed in district courts involve domestic relations cases, including divorce, separation, custody proceedings, support actions, adoptions, and paternity proceedings; and

WHEREAS, the existing judicial system provides for an adversarial proceeding for domestic relations cases which often compounds the negative impact of family dissolutions; and

WHEREAS, state law provides that a mother and father have equal rights with regard to the care, custody, education, and control of the children of the marriage; and

WHEREAS, the concept of mutual parental responsibility should be encouraged; and

WHEREAS, typically, the most acrimonious portion of a divorce proceeding involves the custody and visitation issues; and

WHEREAS, as used in domestic relations law, the terms "custody" and "visitation" have the effect of alienating parties;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the impact on domestic relations law of using the term "parental responsibility" in lieu of "custody" and "parenting time" in lieu of "visitation"; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 632**HOUSE CONCURRENT RESOLUTION NO. 3055**

(Representatives Winrich, Carlson, Fairfield, Hawken)

ECONOMIC DEVELOPMENT INCENTIVES STUDY

A concurrent resolution directing the Legislative Council to study the effectiveness of various economic development incentives and the feasibility and desirability of creating a reporting system that assists in compiling a complete inventory of economic development incentive programs and in evaluating the effectiveness of the programs.

WHEREAS, the state and many of its political subdivisions offer various economic development incentive programs, including grants to businesses, subsidized loans, and preferential tax treatment such as tax increment financing programs, tax exemptions, and tax abatements; and

WHEREAS, although economic development incentive programs account for significant expenditures of public funds at the state and local level, these programs are not subject to uniform and comprehensive reporting procedures that would allow for careful evaluation of the efficiency of the various programs; and

WHEREAS, although there is anecdotal evidence of economic development incentive program successes and failures, there is very little hard evidence regarding the successes and failures;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the effectiveness of various economic development incentives and the feasibility and desirability of creating a reporting system that assists in compiling a complete inventory of economic development incentive programs and in evaluating the effectiveness of the programs; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed March 22, 2001

CHAPTER 633**HOUSE CONCURRENT RESOLUTION NO. 3056**

(Representatives Boucher, Belter, Pollert, Weisz)
(Senators Krauter, G. Nelson)

TRANSPORTATION INFRASTRUCTURE STUDY

A concurrent resolution directing the Legislative Council to study the state of and future demands on the transportation infrastructure in this state.

WHEREAS, transportation infrastructure includes the roads, airport facilities and airline service, service by railroads, and other forms of transportation; and

WHEREAS, the economic well-being of this state, as advanced by agriculture, tourism, technology, or other business ventures, requires an adequate transportation infrastructure and guaranties of the future adequacy of the transportation infrastructure to develop and continue to grow within this state; and

WHEREAS, any decision on how to invest in the transportation infrastructure of this state requires a review of the capacity, needs, and the role of each form of transportation at present and in the future to promote and protect the development of business and industry within this state; and

WHEREAS, a comprehensive plan to address future needs in the transportation infrastructure should include 5-, 10-, 25-, and 50-year plans;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the state of and future demands on the transportation infrastructure 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-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 634**HOUSE CONCURRENT RESOLUTION NO. 3057**

(Representatives Boucher, Belter, S. Kelsh)
(Senators Krauter, G. Nelson)

**STATE TECHNOLOGICAL CAPACITY AND NEEDS
STUDY**

A concurrent resolution directing the Legislative Council to study the technological capacity and needs of the state.

WHEREAS, the technological capacity and needs of the state are changing rapidly and a comprehensive review of the capacity and needs of the state is necessary to ensure the progress of development in the state; and

WHEREAS, the technological capacity and needs in various regions of the state differ greatly; and

WHEREAS, a comprehensive review of technological trends and an examination of future needs and trends will aid policymakers in moving the state forward in the 21st century;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the technological capacity and needs of the state; and

BE IT FURTHER RESOLVED, that the study include an analysis of state, national, and global trends, an examination of the future short-term and long-term needs of the state, a review of the development capacity and needs in the various regions of the state, an analysis of changes in the role of communications, media, networks, and public utilities, including electric and telecommunications, and a review of the public policy with respect to the role of regulation and deregulation; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed March 22, 2001

CHAPTER 635

HOUSE CONCURRENT RESOLUTION NO. 3058

(Representatives Boucher, Belter, Devlin, Wald)
(Senators Krauter, G. Nelson)

HEALTH CARE SERVICES DELIVERY STUDY

A concurrent resolution directing the Legislative Council to study current and 5-, 10-, 25-, and 50-year projections of the delivery of health care services in the state, including the capacity, distribution, and accessibility of the system of providing health services; the changing dynamics of delivery and funding of health services; possible health care services strategies to better serve residents; the role of health care services in future development in this state; and the effects of having inadequate reimbursement in this state, including the impact of inadequate reimbursement on the continued availability, viability, and financial stability of health care.

WHEREAS, health services are delivered through a broad range of providers, including private providers, not-for-profit providers, and through federal, state, and local governments; and

WHEREAS, the method of delivery of health services has changed dramatically over the past generation and will likely change dramatically over the next generation; and

WHEREAS, inadequate levels of reimbursement from Medicare, Medicaid, and private insurance may result in the closure of health care facilities and the termination of services, particularly in rural areas; and

WHEREAS, the changing demographics of the state, including the average age and geographic distribution of residents, impacts the health services needs of North Dakotans; and

WHEREAS, providing health care services to residents improves the quality of life and is a development incentive;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study current and 5-, 10-, 25-, and 50-year projections of the delivery of health care services in the state, including the capacity, distribution, and accessibility of the system of providing health services; the changing dynamics of delivery and funding of health services; possible health care services strategies to better serve residents; the role of health care services in future development in this state; and the effects of having inadequate reimbursement in this state, including the impact of inadequate reimbursement on the continued availability, viability, and financial stability of health care; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 636

HOUSE CONCURRENT RESOLUTION NO. 3059

(Representatives Boucher, Belter)
(Senators Krauter, G. Nelson)

WATER CONCERNS AND NEEDS STUDY

A concurrent resolution directing the Legislative Council to study the water concerns and needs of North Dakota.

WHEREAS, many areas of the state do not have an adequate supply or adequate quality of water for multipurpose uses; and

WHEREAS, the Legislative Assembly has previously declared a state water resources policy, which provides in part that the public health, safety, and general welfare, including the enhancement of opportunities for social and economic growth and expansion for all areas of the state, depends in large measure upon the optimum protection, management, and wise utilization of all the water and related land resources of the state; and

WHEREAS, development of programs and projects to meet current and future water needs for the benefit of the citizens of the state is a matter of concern and high priority; and

WHEREAS, the present water needs of the state's residents as well as the needs for the next 5-, 10-, 25-, and 50-year periods should be assessed; and

WHEREAS, individual community and regional water resource issues and needs should be assessed; and

WHEREAS, the state's future growth and continued development is dependent upon a secure source of good quality water; and

WHEREAS, an assessment of the current statewide water delivery and infrastructure systems should be conducted;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the water concerns and needs of North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed March 22, 2001

CHAPTER 637**HOUSE CONCURRENT RESOLUTION NO. 3060**

(Representatives Lloyd, Carlson)

**SCHOOL DISTRICT PROPERTY TAX RELIEF AND
REPLACEMENT STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of providing school district property tax relief and replacement of revenues through state funding.

WHEREAS, the Fifty-seventh Legislative Assembly has considered legislation to reduce school district property taxes and increase state sales and income taxes to generate replacement revenue for this property tax relief; and

WHEREAS, it appears that the property tax burden has increased substantially in recent years and places an undue burden for school funding on property owners and increased fairness might be provided by shifting a significant part of school funding from property taxes to state revenue sources; and

WHEREAS, issues have been identified in consideration of school district property tax relief legislation which will require detailed analysis; and

WHEREAS, consideration of a change in tax policy of the magnitude required to shift a significant portion of the property tax burden to state funding sources requires a thorough understanding of all consequences of such a change;

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 providing school district property tax relief and replacement of revenues through state funding; 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-eighth Legislative Assembly.

Filed March 22, 2001

CHAPTER 638**HOUSE CONCURRENT RESOLUTION NO. 3061**

(Representatives Boucher, Belter)
(Senators Krauter, G. Nelson)

EDUCATION DELIVERY STUDY

A concurrent resolution directing the Legislative Council to study the delivery of elementary and secondary education during the ensuing 5, 10, and 20 years, with emphasis on a review of the current school district structure, reorganization options, the potential for creating alternate administrative units, and the equitable distribution of state aid to school districts and to obtain the information necessary for this study through a variety of means, including testimony from school district superintendents and business managers.

WHEREAS, elementary and secondary education has long been valued in this state; and

WHEREAS, declining enrollment has necessitated changes in the way elementary and secondary education is delivered; and

WHEREAS, anticipated demographic changes in the ensuing 5, 10, and 20 years will contribute to fundamental changes in the delivery and organizational structure of elementary and secondary education; and

WHEREAS, issues of local versus state control in the delivery and organizational structure of elementary and secondary education need to be addressed; and

WHEREAS, regardless of the demographic changes and the structural changes, the state role in funding elementary and secondary education will continue to be significant; and

WHEREAS, the state has an obligation to ensure an equitable system for the funding of elementary and secondary education;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the delivery of elementary and secondary education during the ensuing 5, 10, and 20 years, with emphasis on a review of the current school district structure, reorganization options, the potential for creating alternate administrative units, and the equitable distribution of state aid to school districts and obtain the information necessary for this study through a variety of means, including testimony from school district superintendents and business managers; 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-eighth Legislative Assembly.

Filed April 30, 2001

CHAPTER 639**HOUSE CONCURRENT RESOLUTION NO. 3062**

(Representatives Boucher, Carlson, Herbel, Kerzman, Price)
(Senator Krauter)

PRESCRIPTION DRUG STUDY

A concurrent resolution directing the Legislative Council to study issues relating to the high and rising cost of prescription drugs in the United States and inequitable prescription drug pricing in the United States and possible methods of containing prescription drug costs.

WHEREAS, rising prescription drug costs in the United States have significant financial impacts on insured individuals, Medicare recipients, state and federal Medicaid expenditures, and uninsured individuals; and

WHEREAS, high costs of prescription drugs result in individuals taking their medication every other day, taking their medication in half doses, cutting back on necessary winter home heating, and cutting back on necessary food; and

WHEREAS, the inequities in prescription drug costs in Canada, Mexico, and the United States are not consistent with the intent of the North American Free Trade Act; and

WHEREAS, several states have initiated programs to address the affordability of prescription drugs, including Maine's Main Rx program and Indiana's Hoosier Rx and several states have introduced legislation to address the issue of affordability of prescription drugs, including Illinois, Michigan, Minnesota, and Ohio;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study issues relating to the high and rising cost of prescription drugs in the United States and inequitable prescription drug pricing in the United States and possible methods of containing prescription drug costs; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed March 22, 2001

CHAPTER 640**HOUSE CONCURRENT RESOLUTION NO. 3064**

(Representatives Ekstrom, Fairfield, Jensen)
(Senator Heitkamp)

WORKERS' COMPENSATION FRAUD STUDY

A concurrent resolution directing the Legislative Council to study workers' compensation fraud by employers, employees, attorneys, health care providers, and rehabilitation service providers in order to identify the financial impact of such fraud on the North Dakota workers' compensation fund, the most appropriate method of addressing such fraud, and the cost of addressing such fraud.

WHEREAS, nationally, workers compensation bureaus estimate that up to one-fourth of workers' compensation cases involve fraud by an employer, involved professional such as a physician or attorney, or an injured worker; and

WHEREAS, workers' compensation fraud results in increases in employer premiums and methods employers use to offset these premium increases include reduced employee benefits such as lower or no pay raises and reduced health insurance coverage; and

WHEREAS, the Legislative Assembly recognized the impact of fraud and enacted legislation in 1995 to create a workers' compensation fraud unit; and

WHEREAS, in 1999 the Legislative Assembly appropriated \$623,928 to workers' compensation for the fraud unit and the unit expects to recover \$7,752,091 during the 1999-2001 biennium;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study workers' compensation fraud by employers, employees, attorneys, health care providers, and rehabilitation service providers in order to identify the financial impact of such fraud on the North Dakota workers' compensation fund, the most appropriate method of addressing such fraud, and the cost of addressing such fraud; 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-eighth Legislative Assembly.

Filed March 22, 2001

CHAPTER 641**HOUSE CONCURRENT RESOLUTION NO. 3065**

(Representatives Weisz, Pollert)
(Senators Klein, Wanzek)

RAIL ACCESS AND SERVICE STUDY

A concurrent resolution directing the Legislative Council to study the negative impact due to diminishing rail access and service, the cost to industry, business, and communities of shifting rail services to state and local highway systems, and the feasibility and desirability of funding enhanced rail facilities including an intermodal rail facility in this state.

WHEREAS, efforts toward economic development through value-added agricultural production requires distribution of produce, goods, and services; and

WHEREAS, diminishing rail access and services adversely impacts agriculture, industry, business, tourism, and communities; and

WHEREAS, diminishing rail access and services shifts the burden of the movement of goods, products, and imports to already overstressed highway systems in this state; and

WHEREAS, many areas of the state are experiencing greater isolation of goods and produce from the services and markets; and

WHEREAS, diminishing rail access and services leads to an accelerated trend toward more shuttle trains, consolidation of local elevators into terminal facilities, and reduction in the number of small community elevators and related agricultural services resulting in added distribution stresses on the state and local highways and loss of support services for the agricultural communities across 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 negative impact due to diminishing rail access and service, the cost to industry, business, and communities of shifting rail services to state and local highway systems, and the feasibility and desirability of funding enhanced rail facilities including an intermodal rail facility 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-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 642**HOUSE CONCURRENT RESOLUTION NO. 3066**

(Representatives Boucher, Berg)
(Senators Krauter, D. Mathern)

**ECONOMICS, POPULATION, AND BUSINESS
GROWTH MONITORING STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of increasing the communication between the executive and legislative branches to monitor and assess the development of state policy regarding economics, population, and business growth.

WHEREAS, crucial elements of state economic development are deeply rooted in several state agencies, but we encourage a formal forum at the executive level or legislative level to coordinate these elements of state economic development; and

WHEREAS, increased communications between the Governor, the Attorney General, the Agriculture Commissioner, the Public Service Commissioners, the President of the Bank of North Dakota, the Chancellor of the University System, the State Engineer, the State Health Officer, and the majority and minority leaders of the North Dakota House of Representatives and Senate would aid in coordinating a comprehensive economic development plan; and

WHEREAS, in addition to the state benefit of efficient use of resources, the state's citizens and businesses could benefit from a unified, coordinated economic development strategic plan;

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 increasing the communication between the executive and legislative branches to monitor and assess the development of state policy regarding economics, population, and business growth; 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-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 643**HOUSE CONCURRENT RESOLUTION NO. 3067**

(Representatives Boucher, DeKrey, Mahoney)

BEHAVIOR MODIFICATION ACADEMY STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a behavior modification academy for certain adult and juvenile offenders.

WHEREAS, certain violations of the law are related to emotional or financial problems or are not violent or serious in nature; and

WHEREAS, these violations of the law include the crimes of driving while under the influence, issuing of nonsufficient fund checks, and certain misdemeanors and nonviolent crimes; and

WHEREAS, these violations of the law may be committed by a juvenile who is not considered a threat to that juvenile's own life or the life or safety of other persons; and

WHEREAS, by addressing the causes of the behavior that are related to these violations of the law, future violations may be diminished and the former offender returned to a productive place in society;

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 behavior modification academy for certain adult and juvenile 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 Fifth-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 644**HOUSE CONCURRENT RESOLUTION NO. 3068**

(Representatives Hawken, R. Kelsch, S. Kelsh)
(Senators Kelsh, D. Mathern)

**TIERED EARLY CHILDHOOD FACILITY LICENSURE
SYSTEM STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of creating a tiered early childhood facility licensure system that requires licensure of facilities not required to be licensed under the current system.

WHEREAS, the state requires licensure of certain early childhood facilities, offers voluntary licensure of early childhood facilities not required to be licensed, offers voluntary registration for in-home providers of early childhood services, offers voluntary carecheck registry for all early childhood facilities, and offers voluntary standard compliance certification for early childhood facilities that are not required to be licensed; and

WHEREAS, the early childhood services licensure, certification, and registration laws and rules are not easily understood by parents and early childhood services providers; and

WHEREAS, the fact that an early childhood facility is certified gives parents the illusion that the facility is being monitored by a licensing agency; and

WHEREAS, all children receiving early childhood service from nonrelative providers deserve to receive these services from providers that have annual training, background checks, and first-aid and cardiopulmonary resuscitation certification to help ensure a healthy and safe environment in which to learn and grow; and

WHEREAS, certified early childhood facilities may be eligible to access monetary benefits under certain state and federal programs;

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 creating a tiered early childhood facility licensure system that requires licensure of facilities not required to be licensed under the current 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-eighth Legislative Assembly.

Filed April 3, 2001

CHAPTER 645

HOUSE CONCURRENT RESOLUTION NO. 3071

(Representatives R. Kelsch, Boehm, Porter, Renner)

(Senators Cook, Tomac)

(Approved by the Delayed Bills Committee)

ST. PATRICK'S DAY PARADE CANCELLATION REFUNDS URGED

A concurrent resolution urging Congress to encourage the individuals and entities who received advance payments from the members of the Mandan High School Band and their families to make every possible effort to refund the payments or to otherwise provide compensation for the financial losses incurred by the band members and their families in preparation for their trip to Ireland.

WHEREAS, the Mandan High School Band had intended to travel to Ireland on March 11, 2001, and appear in the 2001 St. Patrick's Day Parade in Dublin, Ireland; and

WHEREAS, the cost per student was in excess of \$1,625 and the band's total advanced expenses for airfare, lodging, and food exceeded \$169,000; and

WHEREAS, each of the band members worked long and hard to raise funds necessary to offset the inherent costs of the trip and the families of band members were obligated to make up the difference between the amount generated through fundraising efforts and the actual cost of the trip; and

WHEREAS, the 2001 St. Patrick's Day Parade was canceled because of the outbreak of foot and mouth disease in Europe and the trip to Ireland was canceled in recognition of the high risk that the foot and mouth disease could be transported back to the United States and if so transported, could decimate the livestock industry in this state and country; and

WHEREAS, the members of the Mandan High School Band and their families need to be commended for their maturity and wisdom in understanding the value of this state's and this country's livestock industry; and

WHEREAS, the members of the Mandan High School Band and their families have incurred significant financial loss as a result of the trip's cancellation and their inability to be reimbursed for any advanced payments;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to encourage the individuals and entities who received advanced payments from the members of the Mandan High School Band and their families to make every possible effort to refund the payments or to otherwise provide compensation for the financial losses incurred by the band members and their families; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States, the President of Ireland, the United States Ambassador to Ireland, the Irish Ambassador to the United States, the Secretary of Agriculture, the North Dakota Agriculture Commissioner, the North Dakota Farm Bureau, the North Dakota Farmer's Union, the North Dakota Beef Commission, the North Dakota Stockmen's Association, the National Cattlemen's Beef Association, the Cattlemen's Beef Board, the United States Meat Export Federation, the American National Cattlewomen, and to each member of the North Dakota Congressional Delegation.

Filed April 16, 2001

CHAPTER 646**HOUSE CONCURRENT RESOLUTION NO. 3072**

(Representatives Boucher, Brekke, Nicholas)

(Senator Traynor)

(Approved by the Delayed Bills Committee)

DEVILS LAKE RAIL ELEVATION INCREASE URGED

A concurrent resolution urging the Burlington Northern Santa Fe Railway to raise the rail elevation near Devils Lake to keep freight and passenger routes open in response to flooding.

WHEREAS, the rising water level of Devils Lake threatens to interrupt freight and passenger traffic by inundating Burlington Northern Santa Fe Railway's roadbed at locations between Devils Lake and Leeds in the vicinity of Churchs Ferry; and

WHEREAS, a branch line from Churchs Ferry to Rolla will be isolated if the water level of Devils Lake substantially rises; and

WHEREAS, as of March 30, 2001, the National Weather Service projects a 20 percent chance of the lake level rising to 1,449 feet before September 25, 2001, and any higher level would inundate the track; and

WHEREAS, the track may be raised three feet for an estimated cost of \$2,000,000; and

WHEREAS, it is vital to the economy of the state that rail service be maintained;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Burlington Northern Santa Fe Railway raise the rail elevation near Devils Lake to keep freight and passenger routes open in response to flooding; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Burlington Northern Santa Fe Railway and to each member of the North Dakota Congressional Delegation.

Filed April 26, 2001

CHAPTER 647**HOUSE CONCURRENT RESOLUTION NO. 3073**

(Representatives Carlson, Belter, Drovdal)
(Senators G. Nelson, Urlacher, Wardner)
(Approved by the Delayed Bills Committee)

BUSH TAX RELIEF PORPOSAL SUPPORT URGED

A concurrent resolution urging the state's congressional delegation to support and work to enact the tax relief proposal introduced by President Bush.

WHEREAS, President George W. Bush honored the state of North Dakota with his visit to the state on Thursday, March 8, 2001; and

WHEREAS, federal taxes are the highest they have ever been during peacetime; and

WHEREAS, all taxpayers should be allowed to keep more of their own money; and

WHEREAS, the best way to encourage economic growth is to cut marginal tax rates across all tax brackets; and

WHEREAS, President Bush, on his visit to North Dakota, pledged his commitment to end the estate tax, commonly known as the death tax; and

WHEREAS, under current tax law, low-income workers often pay the highest marginal rates; and

WHEREAS, President Bush's tax relief plan will contribute to raising the standard of living for all Americans; and

WHEREAS, President Bush's tax relief plan will increase access to the middle class for hard-working families, treat all middle-class families more fairly, encourage entrepreneurship and growth, and promote charitable giving and education; and

WHEREAS, under President Bush's tax relief plan, the largest percentage reductions will go to the lowest-income earners;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the state's congressional delegation to support and work to enact the tax relief proposal introduced by President Bush; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the North Dakota Congressional Delegation, the Senate Majority Leader, the Senate Minority Leader, the House Majority Leader, the House Minority Leader, and the President of the United States.

Filed April 28, 2001

HOUSE MEMORIAL RESOLUTIONS

CHAPTER 687

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 summoned to eternal rest our former colleagues:

Herbert Anderson, who served in the 42nd and 44th Legislative Assemblies, from District 20, died July 15, 2000;

Richard J. Backes, who served in the 37th through the 39th Legislative Assemblies, from District 43, and in the 40th through the 48th Legislative Assemblies, from District 3, died October 17, 2000;

Pauline M. Benedict, who served in the 45th and 46th Legislative Assemblies, from District 3, died December 21, 1999;

Harold Burau, who served in the 28th and 29th Legislative Assemblies, from District 40, died February 8, 2001;

Monty Burke, who served in the 40th and 41st Legislative Assemblies, from District 32, died October 28, 1999;

John F. Gengler, who served in the 37th and 39th Legislative Assemblies, from District 31, and in the 42nd, 43rd, and 45th Legislative Assemblies, from District 37, died February 5, 2000;

Normen Grubb, who served in the 43rd Legislative Assembly, from District 4, died March 12, 2000;

Dale L. Henegar, who served in the 52nd Legislative Assembly, from District 52, and in the 53rd through the 56th Legislative Assemblies, from District 30, died September 6, 1999;

Roy A. Holand, who served in the 30th through the 33rd Legislative Assemblies, from District 24, died November 26, 1999;

Robert Jacobsen, who served in the 46th and 47th Legislative Assemblies, from District 23, died August 11, 2000;

Irven Jacobson, who served in the 42nd through the 48th Legislative Assemblies, from District 2, died January 4, 2000;

Howard Johnson, who served in the 42nd through the 44th Legislative Assemblies, from District 17, and in the 45th Legislative Assembly, from District 16, died November 11, 2000;

Marlin T. Obie, who served in the 39th Legislative Assembly, from District 6, died July 22, 1999;

Anna Powers, who served in the 37th through the 39th Legislative Assemblies, from District 11, and in the 44th and 45th Legislative Assemblies, from District 22, died July 20, 1999;

Oscar J. Sorlie, who served in the 31st through the 37th Legislative Assemblies, from District 8, died April 14, 1999;

Grace Stone, who served in the 40th through the 43rd Legislative Assemblies, from District 18, died August 29, 2000; 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 6, 2001

CHAPTER 688**HOUSE MEMORIAL RESOLUTION NO. 7002**

(Representative Boucher)

JOHN T. SCHNEIDER MEMORIAL

A memorial resolution in memory of John T. Schneider.

WHEREAS, on March 9, 2001, God summoned to eternal rest John T. Schneider, who served in the 48th through 52nd Legislative Assemblies, from District 21; and

WHEREAS, John T. Schneider served as the minority leader in the North Dakota House of Representatives in the 51st and 52nd Legislative Assemblies; and

WHEREAS, John T. Schneider served his country as an officer in the United States Marine Corps and through a rigorous assignment with the Peace Corps in Afghanistan; and

WHEREAS, John T. Schneider served seven years as United States Attorney, this state's top federal law enforcement officer, from 1993 to 2000; and

WHEREAS, John T. Schneider was a husband to Lois, a father to Jasper and Rocky, and a friend and colleague to the House of Representatives and the people of this state; and

WHEREAS, we now pause to mourn the passing of our former House colleague and honor his memory for his outstanding service to the people of this state by his contributions to public service;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA:

That we express our sorrow on the passing of John T. Schneider and show our appreciation, on behalf of the people of North Dakota, for the loyal and devoted service of our former colleague; and

BE IT FURTHER RESOLVED, that for the perpetuation of his memory this token of respect and sympathy by his successors in trust be printed in the Journal of the House and that the Secretary of State present enrolled copies of this resolution to his widow and children.

Filed March 12, 2001

SENATE CONCURRENT RESOLUTIONS

CHAPTER 648

SENATE CONCURRENT RESOLUTION NO. 4001

(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

PUBLIC CHARITY PROPERTY TAX EXEMPTION STUDY

A concurrent resolution directing the Legislative Council to study the property tax exemption for institutions of public charity providing a combination of health and housing services.

WHEREAS, institutions of public charity provide invaluable services to residents of this state; and

WHEREAS, the Constitution of North Dakota provides that property used exclusively for charitable purposes is exempt from taxation; and

WHEREAS, although numerous statutes provide property tax exemptions for property of institutions of public charity, the amount of property owned by charities and the nature and activities of charities have changed substantially since many of these statutes were enacted; and

WHEREAS, there is uncertainty regarding the appropriate interpretation of the statutory term "institutions of public charity" and whether charities should be subject to full or partial assessment of property taxes for the value of certain services provided for their benefit; and

WHEREAS, uniformity may be lacking in application of the property tax exemption for institutions of public charity providing a combination of health and housing services;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the property tax exemption for institutions of public charity providing a combination of health and housing 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-eighth Legislative Assembly.

Filed April 2, 2001

CHAPTER 649

SENATE CONCURRENT RESOLUTION NO. 4002

(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 Office of Management and Budget; and

WHEREAS, the Fifty-seventh 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 2002 and thus its public hearing responsibility for grants not approved by the Fifty-seventh Legislative Assembly must be delegated to a legislative entity;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Office of Management and Budget appropriations bill enacted by the Legislative Assembly is the Legislative Assembly's approval of and contains directions regarding the use of community services block grant moneys for the period ending September 30, 2003; 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 grant or other federal moneys under the Omnibus Budget Reconciliation Act of 1981 or other relevant federal statutes; and

BE IT FURTHER RESOLVED, that the authority granted by this resolution is in effect during the period from the recess or adjournment of the Fifty-seventh Legislative Assembly through September 30, 2003, 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 February 21, 2001

CHAPTER 650**SENATE CONCURRENT RESOLUTION NO. 4003**

(Legislative Council)
(Taxation Committee)

**CAPITAL GAINS AND ESTATE TAX ELIMINATION
URGED**

A concurrent resolution urging Congress to reduce or eliminate the impediment of capital gains and estate taxes on passage of property to succeeding generations.

WHEREAS, accumulation of value in property is the result of individuals' decisions to devote their lifetimes of hard work and sacrifice in the hope that stewardship of the property can be passed to the next generation; and

WHEREAS, the family farm tradition is threatened by many potentially catastrophic events, among the cruelest of which is that passage of the family farm legacy from one generation to another may be prohibited by imposition of capital gains or estate taxes; and

WHEREAS, the reality of family farming is that capital gains and estate taxes often require liquidation of family farm property and put families out of the farming business; and

WHEREAS, the loss of family farms in the United States has reached levels that should be distressing to Congress as these losses may be irreplaceable; and

WHEREAS, Congress has recognized the erosion of the family farming tradition caused by capital gains and estate taxes and attempted to provide relief in 1999 legislation that was vetoed for other reasons;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to reduce or eliminate the impediment of capital gains and estate taxes on passage of property to succeeding generations; 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 April 2, 2001

CHAPTER 651**SENATE CONCURRENT RESOLUTION NO. 4004**

(Legislative Council)
(Taxation Committee)

**FARM RETIREMENT INVESTMENT WITHDRAWAL
ALLOWANCE URGED**

A concurrent resolution urging Congress to provide a greater opportunity for farmers to participate in retirement investments by allowing withdrawals without penalty when necessary to support family farming operations.

WHEREAS, Congress has recognized the public interest in encouraging private retirement savings and has provided income tax incentives for several types of retirement investments; and

WHEREAS, individual retirement accounts and similar retirement investments are not feasible for farmers due to early withdrawal penalties, which farmers recognize as a risk because of the likelihood that savings may have to be drawn upon to support the family farming operations in lean years; and

WHEREAS, to a much greater extent than is true for other occupations and professions, income of farmers is subject to influences beyond the control of the participants, and this lack of control over financial outcomes merits special consideration in the establishment of policies regarding retirement saving; and

WHEREAS, permitting farmers to withdraw funds from individual retirement accounts without penalty for legitimate needs of family farming operations would help to stabilize the economies of rural communities;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to provide a greater opportunity for farmers to participate in retirement investments by allowing withdrawals without penalty when necessary to support family farming operations; 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 April 2, 2001

CHAPTER 652**SENATE CONCURRENT RESOLUTION NO. 4005**

(Legislative Council)
(Taxation Committee)

**CAPITAL GAIN ON INFLATED FARM PROPERTY
ELIMINATION URGED**

A concurrent resolution urging Congress to reduce or eliminate capital gains taxes on inflationary valuation increases of farm and ranch property.

WHEREAS, although the objective of the capital gains tax is to tax income from investments, for many Americans the tax can be one hundred percent or more of any real increase in value of property because capital gains are not discounted for inflation; and

WHEREAS, Congress has already recognized the unfairness of taxing inflationary increases as income by providing for indexing of income tax rate brackets, standard deductions, personal exemptions, and the earned income credit; and

WHEREAS, the unfairness of taxing inflationary valuation increases can be devastating to owners of property held for a long period of time, such as family farm and ranch property, for which a valuation increase may be almost entirely attributable to inflation, with little or no real gain in value relative to the rest of the American economy; and

WHEREAS, imposition of capital gains taxes on inflationary valuation increases for farm and ranch property serves as an impediment to retirement for farmers and ranchers, further inflates the value of farm and ranch property, and makes acquisition of property much more difficult for the next generation of farmers and ranchers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to reduce or eliminate capital gains taxes on inflationary valuation increases of farm and ranch property; 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 April 2, 2001

CHAPTER 653**SENATE CONCURRENT RESOLUTION NO. 4006**

(Legislative Council)
(Taxation Committee)

FARRM ACCOUNT LEGISLATION URGED

A concurrent resolution urging Congress to enact legislation to allow farm and ranch risk management (FARRM) accounts and to consider limiting the size of the accounts rather than the time funds may be held in the accounts.

WHEREAS, FARRM accounts would allow farmers and ranchers to set aside income in tax-deferred accounts to be drawn upon as taxable income when needed in years of lower income; and

WHEREAS, FARRM accounts would provide a financial management tool for farmers and ranchers to encourage saving, reduce financial risks, stabilize farm income levels in years of bad weather or low commodity prices, and equalize income tax receipts of government from agricultural producers; and

WHEREAS, Congress is considering FARRM accounts legislation with a five-year limit of time funds could be held and it may be more appropriate to limit the amount in these accounts, rather than the time funds may be held, so these accounts could be used for retirement planning and other longer-range benefits;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to enact legislation to allow farm and ranch risk management (FARRM) accounts and to consider limiting the size of the accounts rather than the time funds may be held in the accounts; 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 April 6, 2001

CHAPTER 654**SENATE CONCURRENT RESOLUTION NO. 4007**

(Senators Stenehjem, Christenson, Cook, Mutch, O'Connell)
(Representative R. Kelsch)

LEGISLATIVE EMPLOYEE COMPENSATION

A concurrent resolution designating Senate and House employment positions and fixing compensation.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That for the Fifty-seventh Legislative Assembly, the following positions are designated as employee positions of the Senate and House and are to be paid the wages indicated:

SENATE	
Secretary of the Senate	\$109.00
Assistant secretary of the Senate	95.00
Journal reporter	106.00
Calendar clerk	95.00
Bill clerk	90.00
Sergeant-at-arms	84.00
Administrative assistant to majority leader	99.00
Staff assistant to majority leader	84.00
Administrative assistant to minority leader	99.00
Staff assistant to minority leader	84.00
Chief committee clerk	99.00
Appropriations Committee clerk	99.00
Assistant Appropriations Committee clerk	95.00
Committee clerk for three-day committee	95.00
Committee clerk for two-day committee	88.00
Assistant committee clerk	78.00
Deputy sergeant-at-arms	69.00
Chief page and bill book clerk	77.00
Legislative assistant	65.00
HOUSE	
Chief Clerk	\$109.00
Assistant chief clerk	95.00
Desk reporter	106.00
Calendar clerk	95.00
Bill clerk	90.00
Sergeant-at-arms	84.00
Administrative assistant to majority leader	99.00
Staff assistant to majority leader	84.00
Administrative assistant to minority leader	99.00
Staff assistant to minority leader	84.00
Administrative assistant to Speaker	84.00
Chief committee clerk	99.00
Appropriations Committee clerk	99.00
Assistant Appropriations Committee clerk	95.00
Committee clerk for three-day committee	95.00

Committee clerk for two-day committee	88.00
Assistant committee clerk	78.00
Payroll clerk	80.00
Deputy sergeant-at-arms	69.00
Chief page and bill book clerk	77.00
Telephone attendant	67.00
Legislative assistant	65.00

BE IT FURTHER RESOLVED, that each employee of the Fifty-seventh Legislative Assembly is entitled to an additional \$1 per day for each previous regular session of the Legislative Assembly during which that employee was paid for at least 45 days, as either an employee of the Senate or the House, and to receive this additional compensation, which may not exceed \$10 per day, that employee must certify to the Legislative Council the year of each regular session during which that employee was employed as required by this resolution; and

BE IT FURTHER RESOLVED, that each majority leader and each minority leader is entitled to 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

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 18, 2001

CHAPTER 655**SENATE CONCURRENT RESOLUTION NO. 4008**

(Senators Klein, Cook, Tomac)
(Representatives Berg, Wald)

**QWEST INTERSTATE TELECOMMUNICATIONS
SERVICE AUTHORIZATION URGED**

A concurrent resolution urging the Public Service Commission, Qwest Corporation, and the Federal Communications Commission to proceed as quickly as possible with the process of allowing Qwest Corporation to provide interstate telecommunications services.

WHEREAS, the Federal Telecommunications Act of 1996 was approved by Congress to promote competition in all segments of the telecommunications market; and

WHEREAS, competition in the telecommunications industry is expected to increase the advancement of new telecommunications technologies and systems in the state and to improve services for customers; and

WHEREAS, Section 271 of the Federal Telecommunications Act of 1996 specifically sets forth the tests for determining whether Qwest Corporation's local exchange markets are open to competitors; and

WHEREAS, Section 271 promises to allow Qwest Corporation to provide interstate services to customers in its local service areas once the tests for opened local markets are satisfied; and

WHEREAS, Qwest Corporation is able to provide high-speed data services in any country and in 36 states of the Union, but not from and to North Dakota; and

WHEREAS, Section 271 approval must be granted by the Federal Communications Commission in consultation with the Public Service Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Public Service Commission move the Section 271 process forward as quickly as possible; and

BE IT FURTHER RESOLVED, that Qwest Corporation take all possible action to meet the requirements of Section 271 and submit an application for approval to the Federal Communications Commission; and

BE IT FURTHER RESOLVED, that the Fifty-seventh Legislative Assembly urges the Federal Communications Commission to move the Section 271 process forward as quickly as possible; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the Public Service Commission, the chief executive officer of Qwest Corporation, each member of the Federal Communications Commission, and to each member of the North Dakota Congressional Delegation.

Filed March 9, 2001

CHAPTER 656**SENATE CONCURRENT RESOLUTION NO. 4009**

(Senators Heitkamp, Nichols)
(Representatives Solberg, Warner)

**STATES TO GOVERN ACTIVITIES ON GRASSLANDS
LEGISLATION URGED**

A concurrent resolution urging the President and Congress to allow the states to govern and determine the conditions under which travel and other activities may be conducted on the national grasslands.

WHEREAS, the national grasslands comprise nearly 4,000,000 acres of publicly owned lands and are administered by the United States Forest Service; and

WHEREAS, the United States Forest Service is the largest land management entity in North Dakota and administers three national grasslands in the state, the Little Missouri National Grassland, the Sheyenne National Grassland, and the Cedar River National Grassland; and

WHEREAS, the national grasslands in the state total 1,105,000 acres, which is forty-six percent of all federal land in North Dakota and two percent of the land area of the entire state; and

WHEREAS, some leading environmental and animal rights organizations have blatantly misled many American people about the effects of travel and other activities on national grasslands; and

WHEREAS, because of the importance of these lands to the state and because the state is in the best position to govern these lands and determine the rules under which travel and other activities should be permitted on the national grasslands;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the President and the Congress of the United States to allow the states to govern and determine the conditions under which travel and other activities may be conducted on the national grasslands; 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 Agriculture, the chief of the United States Forest Service, the supervisor of the Dakota Prairie Grasslands office, and to each member of the North Dakota Congressional Delegation.

Filed March 26, 2001

CHAPTER 657**SENATE CONCURRENT RESOLUTION NO. 4011**

(Senators Cook, Christenson, Lee)
(Representatives Boehm, Porter)

LIBRARY SERVICES DELIVERY STUDY

A concurrent resolution directing the Legislative Council to study the library system in North Dakota to determine the most efficient and effective methods for delivery of library services.

WHEREAS, the education of children and the continuing education of adults depends on the quality of the libraries and the materials available to them; and

WHEREAS, the library systems have developed over the years and should be reviewed to determine if improvements and efficiencies can be achieved; and

WHEREAS, technological advances on a statewide, national, and international level are redefining both the scope of and access to libraries and library materials;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the library system in North Dakota to determine the most efficient and effective methods for delivery of library services; and

BE IT FURTHER RESOLVED, that the study include a review of the use of technology by libraries, the location of each library in the state, and the opportunity for improving library services through the use of technology; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed March 26, 2001

CHAPTER 658

SENATE CONCURRENT RESOLUTION NO. 4013

(Senators Solberg, Bercier, Klein)
(Representatives Boucher, Lemieux, Nelson)

HYDROELECTRIC TRANSMISSION FACILITY APPROVAL

A concurrent resolution approving the location, construction, and operation of a hydroelectric transmission facility from Rugby to the Canadian border.

WHEREAS, Otter Tail Power Company and Xcel Energy Inc., public utilities doing business in this state, have proposed the construction of a 230-kilovolt transmission facility from Rugby to the Canadian border; and

WHEREAS, at the Canadian border the facility will connect with a facility originating at Glenboro, Manitoba, being constructed by Manitoba Hydro, a Canadian public utility; and

WHEREAS, North Dakota Century Code Section 49-22-09.1 requires that the Legislative Assembly approve the facility by concurrent resolution; and

WHEREAS, the facility will provide an incremental 200 megawatts of transfer capability between Manitoba and the United States, a significant reliability of load-serving reinforcement in north central North Dakota, an opportunity for North Dakota power plants to increase production, and geographic diversity in line-routing ties between the United States and Canada; and

WHEREAS, it is the policy of this state to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources, and that routes be chosen that minimize adverse human environmental impact while ensuring continued system reliability and integrity and ensuring that the energy needs of this state are met in an orderly and timely fashion; and

WHEREAS, the Public Service Commission has found that the location, construction, and operation of the facility will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state and, accordingly, has issued a certificate of corridor compatibility and a route permit for the facility;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly finds that the facility has met the requirements of the North Dakota Energy Conversion and Transmission Siting Act contained in Chapter 49-22 and the Legislative Assembly approves the location, construction, and operation of a hydroelectric transmission facility from Rugby to the Canadian border.

Filed March 26, 2001

CHAPTER 659**SENATE CONCURRENT RESOLUTION NO. 4014**

(Senators Krauter, G. Nelson, Robinson)
(Representatives Boucher, Niemeier, Sandvig)

ADOPTION LAW STUDY

A concurrent resolution directing the Legislative Council to study the adoption laws of this state and other states.

WHEREAS, adoption is the process by which a legal parent-child relationship is created between individuals who are not biologically parent and child; and

WHEREAS, adoption law is established and governed in large part by the states; and

WHEREAS, all 50 states have statutes governing adoption; and

WHEREAS, North Dakota adoption law provides for notice requirements, waiting periods, and residency requirements that are different from the provisions of adoption laws in neighboring states; and

WHEREAS, to ensure placement of children in need of homes with families, it is important that the adoption process supports the needs of all individuals involved and that the process is as efficient and cost-effective as possible;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the adoption laws of this state and 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-eighth Legislative Assembly.

Filed April 2, 2001

CHAPTER 660

SENATE CONCURRENT RESOLUTION NO. 4015

(Senators Bowman, Andrist, Lyson)
(Representatives Drovdal, Wald, Weiler)

NATIONAL ENERGY POLICY URGED

A concurrent resolution urging the President and the Congress of the United States to develop a national energy policy for our nation that allows responsible access to public land and to implement laws and regulations that promote the multiple use concept on public lands across our state and nation allowing all users to benefit from the public lands.

WHEREAS, public lands in North Dakota are extremely important to the people of this state and throughout the history of this state have been primarily managed under the multiple use management concept; and

WHEREAS, farming and ranching are important aspects of the economy of North Dakota and a comprehensive, well-managed road system is important for the effective management of ranch operations and to ensure the safety and well-being of people who live and work in the national grasslands; and

WHEREAS, the state's law governing section lines and the county's ownership interest in minerals, roads, rights of way, and easements are legal rights that require protection and consideration in determining the management and use of the national grasslands; and

WHEREAS, the oil and gas industry in North Dakota has explored on and drilled in the national grasslands for the past 50 years and restored over 500 wells, and 480 miles of roads representing more than 5,500 acres have been returned to vegetation after the oil and gas resources were depleted, enabling the state to benefit from a valuable natural resource; and

WHEREAS, the nation is on the verge of an energy crisis with 67 percent of our oil reserves lying under federal lands while access to those lands has been decreased by 60 percent during the past 10 years; and

WHEREAS, the roadless plan for the national grasslands will have a continued adverse impact on the counties and states where the national grasslands and the national forests are located;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the President and the Congress of the United States to develop a national energy policy for our nation that allows responsible access to public land and to implement laws and regulations that promote the multiple use concept on public lands across our state and nation allowing all users to benefit from the public lands; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, Secretary of the Interior, the Chief of the United States Forest Service, the supervisor of the Dakota Prairie Grasslands office, and to each member of the North Dakota Congressional Delegation.

Filed March 26, 2001

CHAPTER 661**SENATE CONCURRENT RESOLUTION NO. 4016**

(Senators Tallackson, Kringstad)
(Representatives Carlisle, Keiser, Klemin)

**2002 FORD WORLD CURLING CHAMPIONSHIPS
SALUTED**

A concurrent resolution to salute the 2002 Ford World Curling Championships to be held in Bismarck and to declare April 2002 as World Curling Month in North Dakota.

WHEREAS, the 2002 Ford World Curling Championships will be held in Bismarck, North Dakota, from April 6 to April 14, 2002; and

WHEREAS, the sport of curling enjoys a rich heritage and has been played by North Dakotans for over 100 years; and

WHEREAS, the championships will bring thousands of curling fans from around the world to North Dakota; and

WHEREAS, the championships are expected to result in at least 67 hours of live nationwide television coverage in Canada; and

WHEREAS, the championships will give Bismarck-Mandan and North Dakota an opportunity to showcase the facilities, attractions, rich history, culture, and friendly people that we have to offer national and international visitors;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That April 2002 be declared World Curling Month in North Dakota and that the state, its cities, its business community, and its citizens be encouraged to prepare to welcome curlers and spectators from around the world, to help them Discover the Spirit of North Dakota, and to use the event to promote our state and all that it has to offer; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, the director of the Tourism Department, the North Dakota Curling Association, the United States Curling Association, and the World Curling Federation.

Filed March 26, 2001

CHAPTER 662**SENATE CONCURRENT RESOLUTION NO. 4017**

(Senators G. Nelson, Lyson, C. Nelson)
(Representatives Carlisle, DeKrey, Mahoney)

**LAW ENFORCEMENT AND CORRECTIONAL OFFICER
RETIREMENT STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of implementing a retirement program for all law enforcement and correctional officers within the state of North Dakota which provides retirement benefits similar to those provided to the members of the Highway Patrolmen's retirement system pursuant to North Dakota Century Code Chapter 39-03.1.

WHEREAS, recruiting and retaining quality law enforcement and correctional officers within the state of North Dakota is integral to maintaining the safety and quality of life of all North Dakota residents; and

WHEREAS, the nature of the work performed by law enforcement and correctional officers takes a physical toll on those officers which exceeds that experienced by workers in the vast majority of occupations and necessitates that law enforcement and correctional officers leave their employment at a younger age than from most occupations; and

WHEREAS, other than for members of the Highway Patrolmen's retirement system, a retirement program does not exist that is uniform across the state which allows law enforcement and correctional officers to retire at an age at which they might enjoy their retirement prior to experiencing the physical effects of their work as law enforcement and correctional officers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of implementing a retirement program for all law enforcement and correctional officers within the state of North Dakota that provides retirement benefits similar to those provided to the members of the Highway Patrolmen's retirement system pursuant to North Dakota Century Code Chapter 39-03.1; 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-eighth Legislative Assembly.

Filed March 26, 2001

CHAPTER 663

SENATE CONCURRENT RESOLUTION NO. 4018

(Senators G. Nelson, Lyson, C. Nelson)
(Representatives Carlisle, DeKrey, Mahoney)

COMMITMENT PROCEDURES STUDY

A concurrent resolution directing the Legislative Council to study the commitment procedures contained in North Dakota Century Code Chapter 25-03.1 and the commitment laws from other states to determine if North Dakota law sufficiently addresses the treatment needs of controlled substance abusers in this state, to study the mandatory minimum sentence requirements of North Dakota Century Code Chapter 19-03.1 and the mandatory minimum sentencing laws from other states and the federal government relating to drug offenders, and to study the need for legislation to assist in the cooperative efforts of state, local, and federal agencies to combat unlawful drug use and abuse in this state.

WHEREAS, concerns exist with the escalation of methamphetamine and other controlled substance use and the adequacy of the commitment laws to deal with this problem; and

WHEREAS, questions exist regarding the effectiveness of the mandatory minimum sentencing requirements for controlled substance violations and whether amendments to those laws would assist in combating illegal drug trafficking and usage in this state; and

WHEREAS, it is vitally important that the issues relating to unlawful drug trafficking and usage in this state be addressed by a cooperative effort among state and local agencies, private businesses, schools, families, and all other groups and individuals dedicated to the reduction and the elimination of unlawful drug use in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the commitment procedures of North Dakota Century Code Chapter 25-03.1 and the commitment laws from other states to determine if North Dakota law sufficiently addresses the treatment needs of controlled substance abusers in this state, study the mandatory minimum sentence requirements of North Dakota Century Code Chapter 19-03.1 and the mandatory minimum sentencing laws from other states and the federal government relating to drug offenders, and study the need for legislation to assist in the cooperative efforts of state, local, and federal agencies to combat unlawful drug use and abuse 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-eighth Legislative Assembly.

Filed March 21, 2001

CHAPTER 664**SENATE CONCURRENT RESOLUTION NO. 4019**

(Senators G. Nelson, Krebsbach, D. Mathern)
(Representatives Carlson, Delmore, Disrud)

MEDICAL AND PRIVACY LAWS STUDY

A concurrent resolution directing the Legislative Council to study medical and financial privacy laws in this state, the effectiveness of medical and financial privacy laws in other states, the interaction of federal and state medical and financial privacy laws, and whether current medical and financial privacy protections meet the reasonable expectations of the citizens of North Dakota.

WHEREAS, the advancement of technologies such as computers and the internet have greatly increased the flow of information; and

WHEREAS, the quantity of medical and financial information of an individual that is compiled and maintained by various sources is continuing to increase; and

WHEREAS, every individual in this state has a reasonable expectation of privacy in certain medical and financial information; and

WHEREAS, current medical and financial privacy protections may not meet the reasonable expectations of the citizens of North Dakota; and

WHEREAS, national associations of public officials have compiled useful information on medical and financial privacy; and

WHEREAS, the flow of information across state lines requires coordination of federal and state privacy protections; and

WHEREAS, a number of bills are introduced each legislative session that address specific areas of medical or financial privacy;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study medical, financial, and related privacy laws in this state, the effectiveness of medical and financial privacy laws in other states, the interaction of federal and state medical and financial privacy laws, and whether current medical and financial privacy protections meet the reasonable expectations of the citizens of North Dakota; and

BE IT FURTHER RESOLVED, that due to the complexity and importance of this study, the Legislative Council form a special committee to perform 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-eighth Legislative Assembly.

CHAPTER 665**SENATE CONCURRENT RESOLUTION NO. 4020**

(Senators O'Connell, Lyson, Robinson)
(Representatives Nelson, B. Thoreson, Wikenheiser)

**STATE EMPLOYEE COMPENSATION AND BENEFITS
STUDY**

A concurrent resolution directing the Legislative Council to study state employee compensation and benefit levels.

WHEREAS, some state employees may be receiving salaries that are below salaries received by other public employees and by employees in the private sector; and

WHEREAS, recent state employee pay raises approved by the Legislative Assembly may not have been administered so as to provide all employees with salaries that reflect increases in the cost of living; and

WHEREAS, the Governor's budget presented to the Fifty-seventh Legislative Assembly addresses state employee compensation and benefits;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study state employee compensation and benefit levels; and

BE IT FURTHER RESOLVED, that the study include a comparison with the public employees' salaries and benefits in surrounding states and the private sector in North Dakota, an analysis of regional salaries and benefits, and an analysis of the number of state employees, if any, receiving public assistance; and

BE IT FURTHER RESOLVED, that the Legislative Council work with the state employee compensation commission in conducting this study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed April 16, 2001

CHAPTER 666**SENATE CONCURRENT RESOLUTION NO. 4022**

(Senator Kilzer)

**CONGESTIVE HEART FAILURE GUIDELINES
TRANSMISSION URGED**

A concurrent resolution urging the State Health Officer to transmit the treatment guidelines for congestive heart failure published by the Heart Failure Society of America, Inc., to appropriate health care professionals and to urge the adoption of these guidelines in the professionals' practices.

WHEREAS, congestive heart failure is a major health problem impacting 5,000,000 Americans; and

WHEREAS, each year there are 550,000 new cases of congestive heart failure diagnoses, 200,000 deaths due to the disease, and 1,000,000 hospitalizations due to the disease, with the vast majority of patients not diagnosed until late in the course of the disease; and

WHEREAS, a conservative estimate of annual health expenditures in this country for congestive heart failure is in excess of \$10,000,000,000, with the majority of this money being expended for the cost of hospitalizations; and

WHEREAS, although current treatment guidelines recommend that approximately 80 percent of heart failure patients receive ACE inhibitors in combination with beta blockers to extend life and reduce costly hospitalizations, only 45 percent of patients are actually treated with ACE inhibitors and 20 percent of patients actually receive beta blockers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the State Health Officer to transmit the treatment guidelines for congestive heart failure published by the Heart Failure Society of America, Inc., to appropriate health care professionals and to urge the adoption of these guidelines in the professionals' practices; and

BE IT FURTHER RESOLVED, that the Fifty-seventh Legislative Assembly urges physicians and payers to prescribe or provide reimbursement for the standard of care for congestive heart failure, including Federal Drug Administration-approved beta blockers and ACE inhibitors as well as other therapies that have been shown to reduce the mortality and morbidity associated with congestive heart failure; and

BE IT FURTHER RESOLVED, that the Fifty-seventh Legislative Assembly endorses the inclusion of the latest treatment advances for congestive heart failure, including ACE inhibitor and beta blocker therapies in the curriculum of medical schools; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the State Health Officer, the North Dakota Medical Association, the North Dakota Health Care Association, North Dakota Long Term Care Association, and Blue Cross Blue Shield of North Dakota.

Filed April 2, 2001

CHAPTER 667**SENATE CONCURRENT RESOLUTION NO. 4023**

(Senators Christmann, Bowman, Solberg, Wanzek)
(Representatives Boehm, Nelson)

**GRAIN AND MEATPACKING ANTICOMPETITIVE
CONDITIONS MONITORING URGED**

A concurrent resolution urging Congress to monitor the anticompetitive conditions in the grain and meatpacking industries and to take whatever action necessary to ensure that the consequences of such anticompetitive conditions do not further harm producers and consumers.

WHEREAS, grain industry consolidations, such as that involving Cargill, Incorporated, and Continental Grain Company, have left a single entity controlling more than 40 percent of all United States corn exports, 33 percent of all soybean exports, and at least 20 percent of all wheat exports; and

WHEREAS, meat industry mergers have left the three largest meatpackers, IBP, Cargill's Excel Corporation, and ConAgra's Monfort, controlling almost 80 percent of the cattle slaughter market; and

WHEREAS, IBP, which has over \$14 billion in annual sales, is now set to merge with Tyson Foods, Incorporated; and

WHEREAS, after the proposed merger, Tyson Foods, Incorporated, will have annual sales in excess of \$23 billion; and

WHEREAS, the proposed merger of Tyson Foods, Incorporated, and IBP will create a company that has a major global presence with unparalleled ability to develop innovative food products and market them successfully through international distribution channels; and

WHEREAS, consolidation in the meatpacking and grain industries allows for a reduction in prices paid to producers and an increase in the prices required of consumers; and

WHEREAS, consolidation in the meatpacking and grain industries leads to extensive scale economies and the replacement of small high-cost operations with larger and more efficient ones; and

WHEREAS, all producers and consumers need to understand the effects that anticompetitive practices have on their lives;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to monitor the anticompetitive conditions in the grain and meatpacking industries and to take whatever action necessary to ensure that the consequences of such anticompetitive conditions do not further harm producers and consumers; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the chairman of the Senate Agriculture Committee, the chairman of the House Agriculture Committee, and to each member of the North Dakota Congressional Delegation.

Filed March 26, 2001

CHAPTER 668**SENATE CONCURRENT RESOLUTION NO. 4024**

(Senators Mutch, Krebsbach, T. Mathern)
(Representatives Berg, Thorpe)

**DISABILITY AND SUPPLEMENTAL SECURITY
INSURANCE OFFSET ELIMINATION URGED**

A concurrent resolution urging Congress to eliminate the Social Security disability insurance offset and supplemental security insurance offset for recipients of workers' compensation benefits.

WHEREAS, employees who are injured and dependents of employees who are killed in the course of working for North Dakota employers receive workers' compensation benefits; and

WHEREAS, more than 700 employees or dependents who receive workers' compensation benefits also qualify for Social Security disability insurance benefits if the employees are totally disabled and supplemental security insurance benefits based on financial need; and

WHEREAS, federal law [42 U.S.C. 424a] provides for a reduction in Social Security disability insurance benefits to those persons who are totally disabled and who receive workers' compensation benefits; and

WHEREAS, federal law [42 U.S.C. 1382a] provides for a reduction in supplemental security insurance benefits to those persons who receive workers' compensation benefits notwithstanding the financial need of those people and their families;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to eliminate the Social Security disability insurance offset and supplemental security insurance offset for recipients of workers' compensation benefits; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Commissioner of the Social Security Administration and to each member of the North Dakota Congressional Delegation.

Filed April 2, 2001

CHAPTER 669

SENATE CONCURRENT RESOLUTION NO. 4025

(Senators Krauter, Heitkamp, Tallackson)
(Representatives Fairfield, Gulleson, Lemieux)

CUBAN EMBARGO LIFTING URGED

A concurrent resolution urging Congress to pass legislation that will lift the embargo on trade with Cuba.

WHEREAS, in response to the communist revolution in Cuba, the United States imposed economic sanctions on Cuba in 1962; and

WHEREAS, although Congress has taken steps to ease the embargo on Cuba by allowing sales of food and medicine, restrictions in the federal legislation have delayed or prevented sales of food and medicine to Cuba; and

WHEREAS, it is estimated that Cuba imports up to \$1 billion per year in grain; and

WHEREAS, the economy of agricultural states, and thus of the United States, would greatly benefit from the lifting of all economic sanctions on Cuba; and

WHEREAS, United States Senator Byron L. Dorgan has again introduced legislation to the 106th Congress to repeal all restrictions the United States has placed on the sale of food and medicine to Cuba;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to pass legislation that will lift the embargo on trade with 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, 2001

CHAPTER 670

SENATE CONCURRENT RESOLUTION NO. 4026

(Senators Krauter, Heitkamp)

AGRICULTURAL POLICY EXAMINATION URGED

A concurrent resolution urging Congress to carefully examine United States agricultural policy with a view to addressing trade and export enhancement issues, adequate loan rates for all commodities, and any other issues or provisions that would restore income protection and prosperity for this country's farmers.

WHEREAS, the prices for many commodities grown by farmers in this state have for several years been at historically low levels; and

WHEREAS, the prices received by farmers for their commodities are often lower than the actual cost of production; and

WHEREAS, emergency government assistance payments to farmers in this state have over the last three years exceeded \$1 billion; and

WHEREAS, in 1996, government subsidies accounted for 13 percent of total farm income; and

WHEREAS, in 1999, government subsidies accounted for 42 percent of total farm income; and

WHEREAS, statistics released by the Food and Agricultural Policy Research Institute at the University of Missouri indicate that if the current agricultural policy is not changed, net farm income will by the year 2009 fall to \$37 billion, which is \$17 billion less than the 1996 level; and

WHEREAS, the European Union assists its farmers through high-support prices and generous direct payments, which result in prosperous rural areas and a vibrant agricultural economy; and

WHEREAS, this country's agricultural policy frequently fails to provide adequate protection from market downturns;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to carefully examine United States agricultural policy with a view to addressing trade and export enhancement issues, adequate loan rates for all commodities, and any other issues or provisions that would restore income protection and prosperity for this country's farmers; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States, the majority and minority leaders of the United States Senate and the House of Representatives, the chairman of the Senate Agriculture Committee, the chairman of the House Agriculture Committee, and to each member of the North Dakota Congressional Delegation.

Filed March 26, 2001

CHAPTER 671

SENATE CONCURRENT RESOLUTION NO. 4027

(Senators Thane, Heitkamp)

PRESCRIPTION DRUG STUDY

A concurrent resolution directing the Legislative Council to study the prices for prescription drugs and possible mechanisms to lower those costs to consumers and the state, and whether the state should establish a program to assist in the purchase of prescription drugs based upon income.

WHEREAS, a study by the Center for Studying Health System Change reports that prescription drugs are responsible for 44 percent of the increase in health care costs; and

WHEREAS, Medicaid drug expenditures for the 1997-99 biennium totaled \$47.1 million, of which \$12.3 million were from the general fund; for the 1999-2001 biennium, the department of human services budgeted \$50.4 million, of which \$15 million are state funds; and the latest estimates indicate that the department of human services will expend \$63.5 million, of which \$18.9 million are state funds while the department of human services is anticipating expenditures in the next biennium to exceed \$80 million; and

WHEREAS, escalating prescription drug prices is an especially important issue to seniors because studies indicate the cost of the top 50 drugs used by elderly citizens in this country has been increasing at a rate that has outpaced inflation nearly two to one; and

WHEREAS, escalating prescription drug prices is an especially important issue to rural residents because rural residents typically have lower incomes, limited access to pharmacies, and pay more for prescription drugs than their urban counterparts; and

WHEREAS, studies indicate that inadequate access to affordable prescription drugs results in increased medical expenses such as increased emergency mental health services and increased nursing home admissions; and

WHEREAS, several states have initiated programs to address the affordability of prescription drugs, including Maine's Maine Rx program and Indiana's HoosierRx; and

WHEREAS, several states have introduced legislation to address the issue of affordability of prescription drugs, including Illinois, Michigan, Minnesota, and Ohio;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the prices for prescription drugs and possible mechanisms to lower those costs to consumers and the state, and whether the state should establish a program to assist in the purchase of prescription drugs based upon income; 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-eighth Legislative Assembly.

Filed April 2, 2001

CHAPTER 672**SENATE CONCURRENT RESOLUTION NO. 4028**
(Senator Mutch)**CONSTITUTIONAL CONVENTION CALLS RESCINDED**

A concurrent resolution rescinding all applications made by the Legislative Assembly to the Congress of the United States to call a convention pursuant to the terms of Article V of the United States Constitution for proposing amendments to that Constitution and urging the legislative bodies in other states to take similar action.

WHEREAS, the Legislative Assembly, acting with the best of intentions, has, at various times, applied to the Congress of the United States to call a convention to propose amendments to the United States Constitution, pursuant to the provisions of Article V of the United States Constitution; and

WHEREAS, former Justice of the United States Supreme Court Warren E. Burger, former Associate Justice of the United States Supreme Court Arthur J. Goldberg, and other leading constitutional scholars agree that such a convention may propose sweeping changes to the Constitution, any limitations or restrictions purportedly imposed by the states in applying for such a convention or conventions to the contrary notwithstanding, thereby creating an imminent peril to the well-established rights of the citizens and the duties of various levels of government; and

WHEREAS, the Constitution of the United States has been amended many times in the history of this nation and may be amended many more times, without the need to resort to a constitutional convention, and has been interpreted for more than 200 years and has been found to be a sound document that protects the lives and liberties of the citizens; and

WHEREAS, there is great danger in a new constitution or in opening the Constitution to sweeping changes, the adoption of which would only create legal chaos in this nation and only begin the process of another two centuries of litigation over its meaning and interpretation;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Assembly rescinds the following applications made by the Legislative Assembly to the Congress of the United States to call a convention pursuant to Article V of the United States Constitution:

1967 House Concurrent Resolution "I-1", calling for a convention to amend the Constitution of the United States, relating to apportionment;

1971 Senate Concurrent Resolution No. 4013, calling for a convention to amend the Constitution of the United States to provide revenue sharing;

1975 Senate Concurrent Resolution 4018, calling for a convention to amend the Constitution of the United States to require a balanced cash budget for each session of Congress except in time of war or national emergency;

1979 Senate Concurrent Resolution No. 4033, calling for a convention to amend the Constitution of the United States to prohibit federal estate taxes; and

BE IT FURTHER RESOLVED, that the Legislative Assembly urges the legislative bodies of each state that have applied to Congress to call a convention to rescind; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the presiding officer of each legislative body in each state, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the members of the North Dakota Congressional Delegation, and to the administrator of General Services, Washington, D.C.

Filed March 27, 2001

CHAPTER 673**SENATE CONCURRENT RESOLUTION NO. 4029**

(Senators Kelsh, Every, Tomac)
(Representative Gulleeson)

MARRIAGE PENALTY ELIMINATION URGED

A concurrent resolution urging Congress to eliminate the marriage penalty.

WHEREAS, marriage is recognized throughout the nation as a valuable and important social institution; and

WHEREAS, families today struggle with the high costs of raising children; and

WHEREAS, our current tax code imposes a tax penalty on married couples, often referred to as a marriage penalty; and

WHEREAS, the current marriage penalty in some cases encourages married couples to divorce to avoid taxes; and

WHEREAS, the current marriage penalty in some cases discourages single persons from becoming married; and

WHEREAS, President Bill Clinton vetoed the Marriage Tax Relief Reconciliation Act of 2000 which sought to address the marriage tax penalty; and

WHEREAS, Congressman Earl Pomeroy voted to sustain President Clinton's veto of the Marriage Tax Relief Reconciliation Act of 2000; and

WHEREAS, Congressman Earl Pomeroy has proposed federal legislation by introducing HR 5171 in the 106th Congress, second session, to address the marriage tax penalty;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to support and pass legislation to eliminate the marriage tax penalty so that families will not be punished under the tax code, those who chose to become married will not be encouraged to dissolve their marriage to avoid federal taxes, and those who are contemplating marriage will not resolve to remain unmarried because of the marriage tax penalty; 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 2, 2001

CHAPTER 674**SENATE CONCURRENT RESOLUTION NO. 4031**

(Senators Tollefson, G. Nelson, Schobinger)
(Representatives Belter, Timm)

CORPORATE INCOME TAX LAW STUDY

A concurrent resolution directing the Legislative Council to study the state corporate income tax laws.

WHEREAS, corporate income tax imposition by a state is a significant part of the business climate of the state; and

WHEREAS, North Dakota imposes a corporate income tax that is a burden on business, which discourages businesses from locating in this state; and

WHEREAS, consideration should be given to the feasibility and desirability of eliminating the corporate income tax, eliminating the deduction for federal corporate income taxes paid, or making other changes that will provide a corporate income tax rate that would enhance the attractiveness of the business climate of this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the state corporate income tax laws; 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-eighth Legislative Assembly.

Filed April 2, 2001

CHAPTER 675**SENATE CONCURRENT RESOLUTION NO. 4032**

(Senators Traynor, Holmberg)
(Representative Devlin)

**EDUCATIONAL TRUST EFFECT ON SERVICES
ELIGIBILITY STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of exempting funds set aside in a trust for a child's education when determining the child's eligibility for certain human services programs.

WHEREAS, the cost of a college education continues to rise; and

WHEREAS, the average income for a person with a bachelor's degree is almost 50 percent higher than for a person with a high school diploma; and

WHEREAS, grandparents and other relatives of a child often want to invest money in trust accounts and other types of investments to provide money for the child's postsecondary education; and

WHEREAS, eligibility requirements for certain human services programs do not exempt the funds set aside for education in trusts and other investments;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of exempting funds set aside in a trust for a child's education when determining the child's eligibility for human services programs; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed April 2, 2001

CHAPTER 676**SENATE CONCURRENT RESOLUTION NO. 4033**

(Senators Traynor, Dever, Lyson, C. Nelson, Trenbeath, Watne)
(Judiciary Committee)

**MENTAL ILLNESS COMMITMENT PROCEDURES
STUDY**

A concurrent resolution directing the Legislative Council to study the commitment procedures for individuals with mental illness.

WHEREAS, during the course of any given year, more than 40 million adult Americans are affected by one or more mental disorders and 6.5 million Americans are disabled by severe mental illnesses; and

WHEREAS, North Dakota Century Code Chapter 25-03.1, enacted in 1977, provides the procedures for the voluntary and involuntary commitment of individuals with mental illness; and

WHEREAS, involuntary commitment to a treatment facility raises constitutional issues regarding the deprivation of an individual's constitutionally protected liberty interests; and

WHEREAS, the Legislative Council has not conducted a comprehensive study of the commitment procedures for individuals with mental illness since the 1975-76 interim;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the commitment procedures for individuals with mental illness; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-eighth Legislative Assembly.

Filed April 2, 2001

CHAPTER 677**SENATE CONCURRENT RESOLUTION NO. 4034**

(Senators T. Mathern, Lee)
(Representatives Cleary, Price)

CHARITABLE CHOICE IMPLEMENTATION STUDY

A concurrent resolution directing the Legislative Council to study the issues and concerns of implementing charitable choice, the privatization of federally funded welfare services through faith-based organizations.

WHEREAS, "charitable choice" is the term applied to Section 104 of the federal welfare reform law, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104-193; 110 Stat. 2105], which encourages states to involve charitable, religious, or private organizations in providing federally funded welfare services to the poor and needy; and

WHEREAS, charitable choice allows states to enter purchase of service agreements or voucher arrangements with charitable, religious, or private organizations under the temporary assistance for needy families program; and

WHEREAS, charitable choice also applies to supplemental security income and to the food stamp and Medicaid programs to the extent that the state uses contracts or vouchers with nongovernmental providers; and

WHEREAS, proponents of charitable choice claim that states have long contracted with private and religious groups to provide programs like job training, foster care, child-rearing classes, adult education, day care, and drug rehabilitation and that charities reduce administrative costs by using volunteers and lower-paid employees; and

WHEREAS, opponents claim charitable choice violates the separation of church and state by allowing pervasively sectarian institutions, including houses of worship, to receive federal funding to administer social services and public health benefits on behalf of the government;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the issues and concerns of implementing charitable choice, the privatization of federally funded welfare services through faith-based organizations; 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-eighth Legislative Assembly.

Filed April 2, 2001

CHAPTER 678

SENATE CONCURRENT RESOLUTION NO. 4038

(Senators Wanzek, Erbele, Klein)
(Representatives Nelson, Nicholas)

AGRICULTURAL PRODUCTION CONTRACTS STUDY

A concurrent resolution directing the Legislative Council to study the benefits and risks associated with the use of contracts in agricultural production, including growing and sales provisions, labor arrangements, chemical usage, and provisions necessitated by emerging technologies.

WHEREAS, since World War II, agriculture has become bigger, more intensive, and more specialized both in developed and in developing countries; and

WHEREAS, modern agriculture is being shaped by many of the same technologies that are transforming other industries; and

WHEREAS, farmers and ranchers are expected to respond to market forces, produce an abundance of cheap food, maintain concern for the environment, and look after rural landscapes, the welfare of animals, and the health of consumers; and

WHEREAS, global competition and new technologies are forging new relationships within and between different layers of agribusiness and transforming what was once a very simple process into a very complex legal undertaking;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the benefits and risks associated with the use of contracts in agricultural production, including growing and sales provisions, labor arrangements, chemical usage, and provisions necessitated by emerging technologies; 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-eighth Legislative Assembly.

Filed March 26, 2001

CHAPTER 679**SENATE CONCURRENT RESOLUTION NO. 4039**

(Senators G. Nelson, Krauter)
(Representatives Belter, Boucher)

MISS AMERICA 2001 WELCOMED

A concurrent resolution welcoming Miss America 2001 Angela Perez Baraquio to North Dakota and supporting her efforts to promote character education in schools.

WHEREAS, acts of violence by youth have prompted discussions regarding the role of teachers in developing students' core ethics and values; and

WHEREAS, teachers, more than any other adults besides parents, directly influence the character attributes students develop; and

WHEREAS, a renewed emphasis on character education is urgently needed to support the ethical, social, and academic development of students; and

WHEREAS, in addition to focusing attention on the provision of character education, increased value must be placed on teachers; and

WHEREAS, despite the challenges, teachers need support in their efforts to provide positive character development; and

WHEREAS, Angela Perez Baraquio, Miss America 2001, is a professional educator who has dedicated her year as Miss America to communicating the importance of teaching values while valuing teachers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly welcomes Miss America 2001 Angela Perez Baraquio to North Dakota and supports her efforts to promote character education in schools; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to Ms. Angela Perez Baraquio and to the Miss America organization.

Filed February 21, 2001

CHAPTER 680**SENATE CONCURRENT RESOLUTION NO. 4042**

(Senators Stenehjem, Flakoll, Grindberg, Holmberg)
(Representatives Carlson, Clark)

**NONCRIMINAL TRAFFIC VIOLATION
ADMINISTRATION STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of a centralized process for administrating noncriminal traffic violations.

WHEREAS, noncriminal traffic citations are processed in the 53 counties of this state before traffic violation information is transmitted to the Department of Transportation; and

WHEREAS, current methods of processing noncriminal traffic citations result in redundancies in data entry, delay in transmitting traffic violation information, and substantial investments of time and personnel by county and city employees; and

WHEREAS, central processing of noncriminal traffic citations through the Department of Transportation would provide a single processing point, a central location for submission of citation payments by traffic offenders, and a central point of reporting for state and local law enforcement;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of a centralized process for administrating noncriminal traffic violations; 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-eighth Legislative Assembly.

Filed April 2, 2001

CHAPTER 681

SENATE CONCURRENT RESOLUTION NO. 4043

(Senators Krauter, Kroeplin)
(Representatives Froelich, Kerzman, Nicholas)

CARBON SEQUESTRATION PROGRAMS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of promoting carbon sequestration programs in this state.

WHEREAS, carbon dioxide emissions from manmade activities account for approximately four percent of total carbon dioxide emissions worldwide; and

WHEREAS, while the scientific community continues to debate the causation and extent of global warming from increased carbon dioxide emissions, it is prudent to take actions that reduce carbon dioxide emissions under voluntary, no-regrets policies; and

WHEREAS, many plants absorb carbon dioxide and deposit, sequester, or sink carbon into the soil, thus removing it from the atmosphere; and

WHEREAS, carbon dioxide producing industries may be willing to pay farmers and ranchers to plant crops and use land-management practices that will sequester carbon on their land; and

WHEREAS, recently 400 farmers in Iowa were paid \$8 million for storing carbon; and

WHEREAS, it has been estimated that South Dakota farmers could receive \$20 to \$30 an acre for cultivated land and three to five dollars an acre for rangeland for capturing or sequestering carbon on their land; and

WHEREAS, carbon sequestration may provide a much-needed source of additional income for this state's farmers and ranchers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of promoting carbon sequestration programs 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-eighth Legislative Assembly.

Filed March 26, 2001

CHAPTER 682

SENATE CONCURRENT RESOLUTION NO. 4046

(Senators Tomac, Cook, Freborg)
(Representatives Mahoney, Porter, Wrangham)

MISSOURI RIVER ISSUES STUDY

A concurrent resolution directing the Legislative Council to study issues related to the Missouri River in this state.

WHEREAS, the Flood Control Act of 1944, as amended, assured benefits to all 10 states within the Missouri River Basin under a control and management program that came to be commonly known as the Pick-Sloan Project; and

WHEREAS, the Congress of the United States has directed the United States Army Corps of Engineers to build, operate, and maintain all the features of the Pick-Sloan Project; and

WHEREAS, the Missouri River is a resource of significant value to multiple interests, including recreation and fishing, camping, boating, water supply, economic development, industrial, irrigation, and aesthetic preservation interests; and

WHEREAS, a long-term strategic plan for the Missouri River should be developed by the state and local officials in this state for the benefit of future generations of state residents; and

WHEREAS, the BOMMM (Burleigh, Oliver, Morton, Mercer, and McLean Counties) Joint Water Resource Board is sponsoring the Missouri River Coordinated Resource Management Program to bring all Missouri River stakeholders together for communication, coordination, and consensus on issues critical to the Missouri River; and

WHEREAS, the Missouri River Coordinated Resource Management Program has a technical group, which is developing a geographic information system for the Missouri River in this state, and a vision group, which is developing a comprehensive plan for the Missouri River in this state; and

WHEREAS, the Congress of the United States has enacted the Missouri River Protection and Improvement Act of 2000 to reduce siltation of the Missouri River in the state of North Dakota, to meet the objectives of the Pick-Sloan Project by developing and implementing a long-term strategy concerning critical Missouri River issues, and to develop and finance new programs to implement a long-term strategy for the Missouri River; and

WHEREAS, there are many issues that must be addressed in the development of a long-term strategic plan for the Missouri River, including land use, bank stabilization, endangered species, recreation, conservation of natural areas, woodland, riparian wetland, agriculture and irrigation, delta formation, and other issues;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study issues related to the Missouri River in this state; and

BE IT FURTHER RESOLVED, that the study include an examination of the Pick-Sloan Missouri Basin program; the United States Army Corps of Engineer's master plan; land and natural resource, water management, bank stabilization, and land use issues; and development of a long-range vision for the Missouri River 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-eighth Legislative Assembly.

Filed March 26, 2001

CHAPTER 683**SENATE CONCURRENT RESOLUTION NO. 4048**

(Senators Tallackson, Krauter, Mutch, G. Nelson)

(Representatives Belter, Boucher)

(Approved by the Delayed Bills Committee)

PURPLE HEART MEDAL STAMP ISSUANCE URGED

A concurrent resolution urging the issuance of a postage stamp to honor the Purple Heart medal and those who have received the Purple Heart medal.

WHEREAS, the Order of the Purple Heart for military merit, initially called the Badge of Military Merit, was established by General George Washington at Newburg, New York, on August 7, 1782, during the Revolutionary War; and

WHEREAS, the Order of the Purple Heart is a combat decoration awarded to members of the armed forces of the United States without regard to rank and issued without recommendation but upon specific criteria including being wounded or killed in hostile circumstances; and

WHEREAS, the Purple Heart is a beautiful and the world's costliest medal requiring nineteen separate operations to complete from the rough heart stamped from bronze to the finished medal, plated with gold and enameled in various colors, suspended from a purple and white ribbon;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the issuance of a postage stamp to honor the Purple Heart medal and those who have received the Purple Heart medal; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Postmaster General, the chairman and members of the Citizens' Stamp Advisory Committee, and to each member of the North Dakota Congressional Delegation.

Filed April 10, 2001

CHAPTER 684**SENATE CONCURRENT RESOLUTION NO. 4049**

(Senator T. Mathern)
(Representatives Keiser, S. Kelsh)
(Approved by the Delayed Bills Committee)

LEAD-BASED PAINT CLAIM LIMITATION STUDY

A concurrent resolution directing the Legislative Council to study limiting actions for lead-based paint claims.

WHEREAS, the presence of lead-based paint in public buildings may cause significant environmental and health concerns; and

WHEREAS, it may be in the best interests of the general public, particularly for those persons who may bring claims regarding lead-based paint in public buildings and those against whom the claims may be brought, to set a specific date by which public building owners must bring a cause of action for removal or other abatement costs associated with the presence of lead-based paint in their buildings;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study limiting actions for lead-based paint claims; 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-eighth Legislative Assembly.

Filed April 10, 2001

CHAPTER 685

SENATE CONCURRENT RESOLUTION NO. 4050

(Senator Wanzek)
(Representatives Lemieux, Nelson, Nicholas)
(Approved by the Delayed Bills Committee)

DURUM CROP REVENUE COVERAGE CONTINUATION URGED

A concurrent resolution urging Congress to direct the Secretary of Agriculture and the federal Risk Management Agency to establish a pricing policy so crop revenue coverage for durum can be continued.

WHEREAS, crop revenue coverage historically has provided coverage for both low prices and low yields; and

WHEREAS, crop revenue coverage had initially included an adjustment to reflect the higher price that durum usually commands over spring wheat; and

WHEREAS, North Dakota farmers typically produce more than two-thirds of the nation's durum; and

WHEREAS, in 1999 North Dakota farmers successfully sued the federal government when crop insurance terms were altered after the farmers had purchased policies; and

WHEREAS, the lawsuit settlement amounted to over \$40 million, or approximately \$5,000 for each of 8,000 farmers; and

WHEREAS, a key component of providing crop revenue coverage is the establishment of a base price, or the lowest price that a farmer would be guaranteed for a crop; and

WHEREAS, disagreement exists regarding the time period used to set the base price; and

WHEREAS, the federal Risk Management Agency on March 5, 2001, notified insurance companies that it would not offer crop revenue coverage for durum this year; and

WHEREAS, the federal Risk Management Agency stated that it had to withdraw the policies because durum trades on the futures market were too few to allow the agency to set a base price for durum; and

WHEREAS, the notification by the federal Risk Management Agency effectively left farmers under two weeks to change their insurance plans before the March 15, 2001, deadline; and

WHEREAS, a federal judge on March 15, 2001, refused to direct the federal Risk Management Agency to extend the insurance deadline for at least ten days; and

WHEREAS, North Dakota's durum crops have suffered in recent years from disease brought on by wet weather; and

WHEREAS, the lack of an adequate crop revenue coverage policy would be a severe blow to the North Dakota durum industry;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress to direct the Secretary of Agriculture and the federal Risk Management Agency to establish a pricing policy so crop revenue coverage for durum can be continued; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, the administrator of the federal Risk Management Agency, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed April 18, 2001

CHAPTER 686

SENATE CONCURRENT RESOLUTION NO. 4051

(Senators Wanzek, Klein, Solberg)
(Representatives Boehm, Nicholas, Severson)
(Approved by the Delayed Bills Committee)

LIVESTOCK DISEASE PREVENTION AND ERADICATION URGED

A concurrent resolution urging Congress to take any and all measures necessary to guard against the spread of all livestock diseases, including foot and mouth disease and bovine spongiform encephalopathy, and to encourage aggressive efforts on the part of other countries with a view to eradicating these diseases with all possible celerity.

WHEREAS, foot and mouth disease is a contagious febrile disease affecting cloven-hooved animals; and

WHEREAS, the disease is characterized by a sudden rise in temperature, followed by an eruption of blisters in the mouth, on areas of tender skin such as the udder, and on the feet; and

WHEREAS, with this disease, eating becomes difficult and painful, significant weight loss is experienced, significant decrease in milk production is experienced, and lameness generally occurs, as does death among younger animals; and

WHEREAS, the United States has experienced nine distinct epizootics, the most serious of which occurred in 1914 which invaded 22 states and the District of Columbia, and the latest of which occurred in California in 1929; and

WHEREAS, while considerable progress has been made toward developing an effective vaccine against foot and mouth disease, the cost of vaccinating all susceptible animals remains prohibitive; and

WHEREAS, the vaccination of all susceptible animals will not eradicate foot and mouth disease; and

WHEREAS, the slaughter of all exposed animals is the only presently effective countermeasure to foot and mouth disease; and

WHEREAS, 395 outbreaks of foot and mouth disease have been confirmed in European countries as of March 20, 2001; and

WHEREAS, an outbreak of foot and mouth disease in the United States would cause billions of dollars worth of losses to farmers and ranchers; and

WHEREAS, since 1996, evidence has been increasing for a causal relationship between ongoing outbreaks in European countries of a disease in cattle called bovine spongiform encephalopathy, commonly known as BSE or mad cow disease, and a disease in humans called new variant Cruetzfeldt-Jakob disease; and

WHEREAS, bovine spongiform encephalopathy and new variant Cruetzfeldt-Jakob are invariably fatal brain diseases with incubation periods that are measured in years; and

WHEREAS, as of November 2000, more than 177,500 cases of bovine spongiform encephalopathy have been confirmed in the United Kingdom; and

WHEREAS, this outbreak is believed to have been caused by feeding sheep meat and bone meal to cattle and the outbreak is believed to have been amplified by the feeding of rendered bovine meat and bone meal to calves; and

WHEREAS, the Animal and Plant Health Inspection Service of the United States Department of Agriculture has not detected bovine spongiform encephalopathy in the United States, despite active surveillance efforts since May 1990; and

WHEREAS, federal, state, and local governmental entities must work with each other and their international counterparts to ensure the continuation of a disease-free food supply, the health of our citizens, and the economic health of our livestock sector; and

WHEREAS, federal, state, and local governmental entities must be prepared to address and counter not only the inadvertent spread of foot and mouth disease but also the intentional dissemination of this and similar diseases by individuals or groups that zealously oppose the continuation of the livestock industry;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to take any and all measures necessary to guard against the spread of all livestock diseases, including foot and mouth disease and bovine spongiform encephalopathy, and to encourage aggressive efforts on the part of other countries with a view to eradicating these diseases with all possible celerity; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the United States Attorney General, the Secretary of Agriculture, the Administrator of the Animal and Plant Health Inspection Service, the director of the Central Intelligence Agency, the director of the Federal Bureau of Investigation, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed April 18, 2001

SENATE MEMORIAL RESOLUTION

CHAPTER 689

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:

James M. Cussons, who served in the 46th and 47th Legislative Assemblies, from District 23, died March 22, 2000;

Oscar J. Sorlie, who served in the 38th and 39th Legislative Assemblies, from District 8, and in the 40th through the 42nd Legislative Assemblies, from District 20, died April 14, 1999; 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 7, 2001